

ACT 367

S.B. NO. 1487

A Bill for an Act Relating to Mutual Benefit Societies.

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

SECTION 1. Chapter 432, Hawaii Revised Statutes, is amended by adding to part IV of article 1 four new sections to be appropriately designated and to read as follows:

“§432:1- Definitions. As used in this article:

“Health care expenditures” means claims incurred.

“Managed hospital payment basis” means agreements wherein the financial risk is primarily related to the degree of utilization rather than to the cost of services.

“Member” means an individual who is covered by a mutual benefit society.

“Net worth” means the excess of total admitted assets over total liabilities, but the liabilities shall not include fully subordinated debt.

“Operating expenses” means claims adjustment, administrative, soliciting, and reinsurance allowances.

“Society” means mutual benefit society.

“Uncovered expenditures” means the costs to the mutual benefit society for health care services that are the obligation of the mutual benefit society, for which a member may be liable in the event of the mutual benefit society’s insolvency, and for which no alternative arrangements have been made that are acceptable to the commissioner. Uncovered expenditures do not include expenditures for services when a provider has agreed not to bill the member even though the provider is not paid by the mutual benefit society, or for services that are guaranteed, insured, or assumed by a person or organization other than a mutual benefit society.

§432:1- Protection against insolvency. (a) Net worth requirements are as follows:

- (1) Before issuing a certificate of authority pursuant to section 432:1-301, the commissioner shall require that the mutual benefit society has an initial net worth of \$1,500,000 and the society shall thereafter maintain the minimum net worth required under paragraph (2);
 - (2) Except as provided in paragraph (3), every mutual benefit society shall maintain a minimum net worth equal to the greater of:
 - (A) \$1,500,000;
 - (B) Two per cent of annual premium revenues as reported on the most recent annual financial statement filed with the commissioner on the first \$150,000,000 of premium revenues and one per cent of annual premium revenues on the premium revenues in excess of \$150,000,000; or
 - (C) An amount equal to eight per cent of the sum of annual health care expenditures and operating expenses as reported on the most recent financial statement filed with the commissioner;
 - (3) The minimum net worth requirement set forth in subparagraph (2)(C) shall be phased in as follows:
 - (A) Fifty per cent of the amount required by subparagraph (2)(C) by December 31, 1997;
 - (B) Seventy-five per cent of the amount required by subparagraph (2)(C) by December 31, 1998; and
 - (C) One hundred per cent of the amount required by subparagraph (2)(C) by December 31, 1999.
- (b) Deposit requirements are as follows:
- (1) Unless otherwise provided below, each mutual benefit society shall deposit with the commissioner or, at the discretion of the commissioner, with any organization or trustee acceptable to the commissioner through which a custodial or controlled account is utilized, cash, securities, or any combination of these or other measures that are acceptable to the commissioner which at all times shall have a value of not less than \$300,000;
 - (2) A mutual benefit society that is in operation on the effective date of this section shall make a deposit equal to \$150,000. Within one year after

the effective date of this section, a society that is in operation on the effective date of this section shall make an additional deposit of \$150,000 for a total of \$300,000;

- (3) Deposits shall be an admitted asset of the mutual benefit society in the determination of net worth;
- (4) All income from deposits shall be an asset of the mutual benefit society. A society that has made a securities deposit may withdraw that deposit or any part thereof after making a substitute deposit of cash, securities, or any combination of these or other measures of equal amount and value. Any securities shall be subject to approval by the commissioner before being deposited or substituted;
- (5) The deposit shall be used to protect the interests of the mutual benefit society's members and to assure continuation of health care services to members of a society which is in rehabilitation, liquidation, or conservation. The commissioner may use the deposit for administrative costs directly attributable to a receivership or liquidation. If a society is placed in receivership or liquidation, the deposit shall be an asset subject to article 15 of chapter 431; and
- (6) The commissioner may reduce or eliminate the deposit requirement if the mutual benefit society deposits with the director of finance or the insurance commissioner, for the protection of all subscribers and members, wherever located, cash, acceptable securities, or surety, and delivers to the commissioner a certificate to that effect, duly authenticated by the appropriate state official holding the deposit.

(c) Every mutual benefit society, when determining liabilities, shall include an amount estimated in the aggregate to provide for any unearned premium, and for the payment of all claims for health care expenditures which have been incurred, whether reported or unreported, which are unpaid and for which the organization is or may be liable, and to provide for the expense of adjustment or settlement of claims. The liabilities shall be computed in accordance with rules adopted by the commissioner upon reasonable consideration of the ascertained experience and character of the society.

(d) Every contract between a mutual benefit society and a participating provider of health care services shall be in writing and shall set forth that in the event the society fails to pay for health care services as set forth in the contract, the subscriber or member shall not be liable to the provider for any sums owed by the society. If a contract with a participating provider has not been reduced to writing as required by this subsection, or if a contract fails to contain the required prohibition, the participating provider shall not collect or attempt to collect from the subscriber or member sums owed by the society. No participating provider, or agent, trustee, or assignee thereof, may maintain any action at law against a subscriber or member to collect sums owed by the society.

(e) The commissioner shall require that each mutual benefit society have a plan for handling insolvency which allows for continuation of benefits for the duration of the contract period for which premiums have been paid and continuation of benefits to members who are confined on the date of insolvency in an inpatient facility until their discharge or expiration of benefits. In considering such a plan, the commissioner may require:

- (1) Insurance to cover the expenses to be paid for continued benefits after the insolvency;
- (2) Provisions in provider contracts that obligate the provider to provide services for the duration of the period after the society's insolvency for which premium payment has been made and until the members' discharge from inpatient facilities;

- (3) Insolvency reserves;
 - (4) Acceptable letters of credit; or
 - (5) Any other arrangements acceptable to the commissioner to assure that benefits are continued as specified above.
- (f) An agreement to provide health care services between a provider and a mutual benefit society shall require that a provider shall give the organization at least sixty days' advance notice in the event of termination.

§432:1- Uncovered expenditures insolvency deposit. (a) If, at any time, uncovered expenditures exceeds ten per cent of total health care expenditures, a mutual benefit society shall place with the commissioner or with any organization or trustee acceptable to the commissioner through which a custodial or controlled account is maintained, an uncovered expenditures insolvency deposit consisting of cash or securities that are acceptable to the commissioner. The deposit shall have, at all times, a fair market value in an amount of one hundred twenty per cent of the society's outstanding liability for uncovered expenditures for members in this State, including incurred but not reported claims, and shall be calculated as of the first day of the month and maintained for the remainder of the month. If a society is not otherwise required to file a quarterly report, it shall file a report within forty-five days of the end of the calendar quarter with information sufficient to demonstrate compliance with this section.

(b) The deposit required under this section is in addition to the deposit required under section 432:1- and is an admitted asset of the mutual benefit society in the determination of net worth. All income from the deposits or trust accounts shall be assets of the society and may be withdrawn from the deposit or account quarterly with the approval of the commissioner.

(c) A mutual benefit society that has made a deposit may withdraw that deposit or any part of the deposit if:

- (1) A substitute deposit of cash or securities of equal amount and value is made;
- (2) The fair market value exceeds the amount of the required deposit; or
- (3) The required deposit under subsection (a) is reduced or eliminated.

Deposits, substitutions, or withdrawals may be made with the prior written approval of the commissioner.

(d) The deposit under this section shall be held in trust and may be used only as provided in this section. The commissioner may use the deposit of an insolvent mutual benefit society for administrative costs associated with administering the deposit and payment of claims of members of this State for uncovered expenditures in this State. Claims for uncovered expenditures shall be paid on a pro rata basis based on assets available to pay such ultimate liability for incurred expenditures. Partial distribution may be made pending final distribution. Any amount of the deposit remaining shall be paid into the liquidation or receivership of the society.

(e) The commissioner may prescribe by rule the time, manner, and form for filing claims under subsection (d).

(f) The commissioner may require by rule or order mutual benefit societies to file annual, quarterly, or more frequent reports as the commissioner deems necessary to demonstrate compliance with this section. The commissioner may require that the reports include liability for uncovered expenditures as well as an audit option.

§432:1- Rehabilitation, liquidation, or conservation of mutual benefit societies. (a) Any rehabilitation, liquidation, or conservation of a mutual benefit society shall be deemed to be the rehabilitation, liquidation, or conservation of an insurance company and shall be conducted under the supervision of the commis-

sioner pursuant to the law governing the rehabilitation, liquidation, or conservation of insurance companies. The commissioner may apply for an order directing the commissioner to rehabilitate, liquidate, or conserve a mutual benefit society upon any one or more grounds set out in article 15 of chapter 431, or, when in the commissioner's opinion, the continued operation of the society would be hazardous either to the members or to the general public. Members shall have the same priority in the event of liquidation or rehabilitation as the law provides to policyholders of an insurer.

(b) For purposes of determining the priority of distribution of general assets, claims of members and members' beneficiaries shall have the same priority as established by article 15 of chapter 431 for policyholders and beneficiaries of insureds of insurance companies. If a member is liable to any provider for services provided pursuant to and covered by the health care plan, that liability shall have the status of a member claim for distribution of general assets. Any provider who is obligated by statute or agreement to hold members harmless from liability for services provided pursuant to and covered by a health care plan shall have a priority of distribution of the general assets immediately following that of members and members' beneficiaries as described in this subsection, and immediately preceding the priority of distribution described in article 15 of chapter 431."

SECTION 2. Section 431:1-502,¹ Hawaii Revised Statutes, is amended to read as follows:

“§432:1-502 [Receiver; appointment, powers, duties. (a) The commissioner shall give immediate notice thereof to the society and demand that irregularities be promptly corrected, impairments of assets be made good, that all unsafe or unauthorized practices be discontinued, or that there be compliance with the laws in question, if, upon the examination of any mutual benefit society, as defined in section 432:1-104(2), the commissioner ascertains and finds that:

- (1) The laws of the State relating to such societies are not being fully observed;
- (2) That any irregularities are being practiced;
- (3) That the assets have been or are in danger of being impaired;
- (4) That the society is conducting its affairs in an unsafe manner so that continuance of its business would be hazardous to the public; or
- (5) That it is necessary for the protection of the members or creditors of the society.

(b) If the commissioner's demand issued under subsection (a) is not complied with within a reasonable time fixed by the commissioner, but not exceeding thirty days after the notice, then upon the request of the commissioner, application shall be made by the attorney general on the commissioner's behalf, to a judge or court of competent jurisdiction for the appointment of a receiver for the society. If it appears that any of the facts enumerated in the application as the ground for a receivership exists, the court or judge shall immediately appoint a competent person as receiver, and shall determine such receiver's bond and prescribe the receiver's duties, and may make such other or further orders as shall seem proper.

(c) Except as otherwise provided by the court or judge, any receiver appointed under this article shall have, exercise, and perform all of the powers and duties of a receiver of a financial institution under chapter 412, article 2, part IV.] **Summary orders and supervision.** (a) **Whenever the commissioner determines that the financial condition of any mutual benefit society is such that its continued operation might be hazardous to its members, creditors, or the general public, or that it has violated any provision of this chapter, the commissioner, after notice and hearing, may order the society to take such action as may be reasonably necessary to**

rectify such condition or violation, including but not limited to one or more of the following:

- (1) Reducing the total amount of present and potential liability for benefits by reinsurance or other method acceptable to the commissioner;
- (2) Reducing the volume of new business being accepted;
- (3) Reducing expenses by specified methods;
- (4) Suspending or limiting the writing of new business for a period of time;
- (5) Increasing the society’s capital and surplus by contribution; or
- (6) Taking such other steps as the commissioner may deem appropriate under the circumstances.

(b) For purposes of this section, the violation by a society of any law of this State to which such society is subject shall be deemed a violation of this chapter.

(c) The commissioner, by rule, may set uniform standards and criteria for early warning that the continued operation of any society might be hazardous to its members, creditors, or the general public and to set standards for evaluating the financial condition of any society, which standards shall be consistent with the purposes expressed in subsection (a).

(d) The remedies and measures available to the commissioner under this section shall be in addition to, and not in lieu of, the remedies and measures available to the commissioner under article 15 of chapter 431.’’

SECTION 3. This Act shall not apply to:

- (1) Societies that do not operate as a hospital, medical or indemnity society, or corporation; and
- (2) Labor union mutual benefit societies under section 432:1-103(b).

SECTION 4. If any provision of this Act, or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 6. This Act shall take effect upon its approval.

(Approved July 3, 1997.)

Notes

- 1. Should be “432:1-502”.
- 2. Edited pursuant to HRS §23G-16.5.