

ACT 204

S.B. NO. 2842

A Bill for an Act Relating to the Hawaii Medical Malpractice Underwriting Plan.

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

SECTION 1. Section 435C-2, Hawaii Revised Statutes, is amended by amending the definition of “net direct premiums” to read as follows:

““Net direct premiums” means general casualty insurance direct premiums written as reported on [page 14] the Hawaii State Page of the Exhibit of Premium and Losses of the annual statement under medical malpractice, workers’ compensation, and other liability lines of business.”

SECTION 2. Section 435C-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

- “(b) (1) The rates, rating plan, rating classifications, territory, and policy forms applicable to the insurance written by the plan and statistics relating thereto shall be subject to sections [431-691 to 431-707] 431:14-101 to 431:14-117 unless otherwise provided hereto, giving due consideration to the past and prospective loss and expense experience within and outside this State for medical malpractice insurance of all of the member companies of the plan, trends in the frequency and severity of losses, the investment income of the plan, and such other information as the insurance commissioner may require[.];
- (2) Any deficit sustained by the plan in any one year shall be recouped, pursuant to the plan of operation and the rating plan then in effect by one or both of the following procedures:
 - (A) An assessment upon the policyholders;
 - (B) A rate increase applicable prospectively[.];
- (3) Effective after the initial year of operation, rating plans and rating rules, and any provisions of recoupment through policyholder assessment or premium rate increase, should be based upon the plan’s loss and expense experience, together with such other information based upon such experience as the insurance commissioner may deem appropriate. The resultant premium rates shall be on an actuarially sound basis and shall be calculated to be self-supporting[.];
- (4) In the event that sufficient funds are not available for the sound financial operation of the plan, pending recoupment as provided in paragraph (3) of this subsection, all members shall, on a temporary basis contribute to the financial requirements of the plan in the manner provided for in section 435C-5 [of this chapter]. Any such contribution shall be reimbursed to the members following recoupment as provided in paragraph (3) of this subsection[.]; and
- (5) The commissioner shall consider requiring the plan to offer policies on a claims made or occurrence basis; provided[, however,] that the premium rate charged for the policies shall be at rates established on an actuarially sound basis and which are calculated to be self-supporting.”

SECTION 3. Section 435C-5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[]§435C-5[]]~~ **Participation.** All insurers [which] that are members of the plan shall participate in its [writings,] expenses, profits, and losses in the proportion that the net direct premiums of each such member (excluding that portion of premiums attributable to the operation of the plan) written during the preceding calendar year bears to the aggregate net direct premiums written in this State by all members of the plan. Insurers that are members of the plan may also be appointed by the insurance commissioner as servicing companies to underwrite the medical malpractice insurance. Each insurer’s participation in the plan shall be determined annually on the basis of such net direct premiums written during the preceding calendar year, as reported in the annual statements and other reports filed by the insurer with the insurance commissioner. No member shall be obligated in any one year to reimburse the plan on account of its proportionate share in the deficit from operations of the plan in that year in excess of one per cent of its policyholders’ surplus and the aggregate amount not so reimbursed shall be reallocated among the remaining members in accordance with the method of determining participation prescribed in this [subdivision] section after excluding from the computation the total net direct premiums of all members not sharing in [such] the excess deficit. In the event that the deficit from operations allocated to all members of the plan in any calendar year shall exceed one per cent of their respective policyholders’ surplus, the amount of such deficit shall be allocated to each member in accordance with the method of determining participation prescribed in this [subdivision.] section.”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved July 17, 1998.)