

## ACT 192

H.B. NO. 848

A Bill for an Act Relating to Health Insurance.

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

SECTION 1. The legislature finds that the federal Patient Protection and Affordable Care Act, P.L. 111-148 (Affordable Care Act), authorizes each state to define “small employer” for the purposes of the Affordable Care Act.

The legislature further finds that the Affordable Care Act includes or references the Public Health Service Act and the Health Insurance Portability and Accountability Act of 1996. To ensure compliance with relevant federal laws, it is necessary to specify that the definition of “small employer” in section 431:2-201.5, Hawaii Revised Statutes, applies to the Public Health Service Act, the Health Insurance Portability and Accountability Act of 1996, and all provisions of the Affordable Care Act, including but not limited to Affordable Care Act provisions governing eligibility for the small business exchange; essential health benefits; actuarial valuation; age rating; risk pool designation; risk adjustment, risk corridors, and reinsurance; and the Hawaii health connector’s web portal.

The legislature further finds that the Affordable Care Act requires states to establish their own standards for provider network adequacy. Currently, there are multiple agencies that apply network adequacy standards to health insurers. Establishing a uniform network adequacy standard for all health insurers doing business in Hawaii will assure consumers that health care provider networks and access to care will remain consistent.

The purpose of this Act is to ensure Hawaii’s insurance laws are in compliance with federal health insurance laws by:

- (1) Creating a uniform network adequacy standard to be applied to all health insurers doing business in the State; and
- (2) Clarifying the existing definition of “small employer” under section 431:2-201.5, Hawaii Revised Statutes, to ensure the definition of “small employer” is applicable to the implementation of all provisions of the Affordable Care Act in Hawaii.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
HEALTH CARE PROVIDER NETWORK ADEQUACY**

**§ -1 Definitions.** As used in this chapter, unless the context otherwise requires:

“Commissioner” means the insurance commissioner of the State.

“Managed care plan” means any plan that meets the definition of managed care plan under section 432E-1.

**§ -2 Health care provider network adequacy.** (a) On or before January 1 of each calendar year, each managed care plan shall demonstrate the adequacy of its provider network to the commissioner. A provider network shall be considered adequate if it provides access to sufficient numbers and types of providers to ensure that all covered services will be accessible without unreasonable delay, after taking into consideration geography. The commissioner shall also consider any applicable federal standards on network adequacy. A certification from a national accreditation organization shall create a rebuttable presumption that the network of a managed care plan is adequate. This presumption may be rebutted by evidence submitted to, or collected by, the commissioner.

(b) A managed care plan that does not have a certification from a national accreditation organization may submit to the commissioner a plan to become accredited by a national accreditation organization within a period of two years if the managed care plan has provided sufficient evidence that its network is reasonably adequate at the time of submission of the plan. The commissioner shall also consider any applicable federal standards on network adequacy. The commissioner may extend the period of time for accreditation.

(c) The commissioner shall approve or disapprove a managed care plan’s annual filing on network adequacy. If the commissioner deems the filing incomplete, additional information and supporting documentation may be requested. A managed care plan shall have sixty days to appeal an adverse decision by the commissioner in an administrative hearing pursuant to chapter 91.

(d) To enable the commissioner to determine the network adequacy for qualified health plans to be listed with the Hawaii health connector under section 435H- , the commissioner may request that a managed care plan demonstrate the adequacy of its provider network at the time that it files its health plan benefit document with the commissioner.

(e) This section shall apply to any managed care plan qualified as a prepaid health care plan pursuant to chapter 393.”

SECTION 3. Chapter 435H, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§435H- Network adequacy.** The commissioner shall provide the Hawaii health connector with a list of qualified health plans that meet network adequacy standards as determined by the commissioner.”

SECTION 4. Section 431:2-201.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The following definitions shall be used when applying Title 42 United States Code section 300gg, et seq.:

“Employee” means an employee who works on a full-time basis with a normal workweek of twenty hours or more.

“Group health issuer” means all persons offering health insurance coverage to any group or association, but shall not include those persons offering benefits exempted from Title I of the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, under sections 732(c) and 733(c) of Title I of the Employee Retirement Income Security Act of 1974 and sections 2747 and 2791(c) of the Public Health Service Act.

“Qualifying event” means the date of issuance of a general excise tax license, the loss of a job, a reduction in hours of work, or the exhaustion of the federal Consolidated Omnibus Budget Reconstruction Act continuation coverage that results in a loss of health care coverage.

“Self-employed individual” means a person operating the person’s own business, whether as a sole proprietorship or in any other legally recognized manner in which a person may operate the person’s own business, who has a general excise tax license for that business, and who is registered or licensed by the department of commerce and consumer affairs for that business.

“Small employer” means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who ~~employs between~~ employed an average of at least one ~~and no~~ but no more than fifty employees[-] on business days during the preceding calendar year and who employs at least one employee on the first day of the plan year.”

SECTION 5. Section 432E-3, Hawaii Revised Statutes, is repealed.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 7. This Act, upon its approval, shall take effect on July 1, 2013; provided that the amendments made to section 431:2-201.5, Hawaii Revised Statutes, by this Act shall not be repealed when that section is reenacted on July 1, 2013, by section 3 of Act 120, Session Laws of Hawaii 2008, as amended by section 14 of Act 11, Session Laws of Hawaii 2009.

(Approved June 25, 2013.)

**Note**

1. Edited pursuant to HRS §23G-16.5.