

A Bill for an Act Relating to Insurance.

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

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding a new part to article 10E to be appropriately designated and to read as follows:

“PART . COVERAGES

§431:10E- Notice requirement. Thirteen months prior to discontinuation of writing property insurance coverage, an insurer shall file an affidavit with the commissioner stating the reasons for the discontinuation.

§431:10E- Extended coverage. Insurers seeking to provide multi-peril coverage for residential property after July 1, 2016, shall submit to the commissioner a written request for permission to write the coverage. The commissioner may disapprove the request. If the request is disapproved, the insurer shall not write the coverage.”

SECTION 2. Section 431:2D-107, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

- “(g)(1) Except as provided in subsections (h) and (i), an insurance compliance self-evaluative audit is privileged information and is not discoverable or admissible as evidence in any legal action in any civil, criminal, or administrative proceeding. The privilege created herein is a matter of substantive law of this State and is not merely a procedural matter governing civil or criminal procedures in the courts of this State;
- (2) If any company, person, or entity performs or directs the performance of an insurance compliance audit, an officer, employee, or agent involved with the insurance audit, or any consultant who is

hired for the purpose of performing the insurance compliance audit may not be examined in any civil, criminal, or administrative proceeding as to the insurance compliance audit or any insurance compliance self-evaluative audit document, as defined in this section. This subsection does not apply if the privilege set forth in ~~[subsection (g)(1) of this section]~~ paragraph (1) is determined under subsection (h) or (i) not to apply;

- (3) A company may voluntarily submit, in connection with examinations conducted under this article, an insurance compliance self-evaluative audit document to the commissioner or the commissioner's designee, as a confidential document under this section without waiving the privilege set forth in this section to which the company would otherwise be entitled; provided~~[-however,]~~ that the provisions in this section permitting the commissioner to make confidential documents public pursuant to this section and access to the National Association of Insurance Commissioners shall not apply to the insurance compliance self-evaluative audit document under other provisions of applicable law, any such report furnished to the commissioner shall not be provided to any other persons or ~~[[entities]]~~ and shall be accorded the same confidentiality and other protections as provided above for voluntarily submitted documents. Any use of an insurance compliance self-evaluative audit document ~~[furnished as a result of the]~~ shall be limited to determining whether or not any disclosed defects in an insurer's policies and procedures or inappropriate treatment of customers has been remedied or that an appropriate ~~[plan for their]~~ remedy is in place.

A company's insurance compliance self-evaluative audit document submitted to the commissioner shall remain subject to all applicable statutory or common law privileges including, but not limited to, the work product doctrine, attorney-client privilege, or the subsequent remedial measures exclusion.

Any compliance self-evaluative audit document so submitted and in the possession of the commissioner shall remain the property of the company and shall not be subject to any disclosure or production under chapter ~~[92;]~~ 92F;

- (4) Disclosure of an insurance compliance self-evaluative audit document to a governmental agency, whether voluntary or pursuant to compulsion of law, shall not constitute a waiver of the privilege set forth in ~~[subsection (g)(1)]~~ paragraph (1) with respect to any other persons or any other governmental agencies."

SECTION 3. Section 431:7-201, Hawaii Revised Statutes, is amended to read as follows:

"§431:7-201 Annual and monthly tax statements. (a) Each authorized insurer shall electronically file with the commissioner annually, on or before March 1 in each year, a statement signed by a duly authorized person on its behalf, setting forth the total business transacted, and the amount of gross premiums reported by the insurer, pursuant to section 431:7-202, during the year ending on the preceding December 31, from all risks or property resident, situated, or located within this State, together with such other information as may be required by the commissioner to determine the taxability of premiums. The term "gross premiums" as used in this part shall not include consideration paid for annuities.

(b) Each authorized insurer shall electronically file with the commissioner monthly, on or before the twentieth day of the calendar month following the month in which the taxes accrue, a statement signed by a duly authorized person on its behalf, setting forth the total business transacted and the amount of gross premiums reported by the insurer, pursuant to section 431:7-202, during the month from all risks or property resident, situated, or located within this State, together with other information as may be required by the commissioner to determine the taxability of premiums.

(c) Any insurer failing or refusing to electronically file the annual tax statement on or before March 1, or the monthly statement on or before the twentieth day of the calendar month following the month in which the taxes accrue, shall be liable for a fine in an amount not less than \$100 and not more than \$500 for each day of delinquency.”

SECTION 4. Section 431:7-202, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) The taxes imposed by subsections (a), (b), (c), and (d) shall be paid monthly. The monthly tax shall be due and payable by electronic payment via the Automated Clearing House debit or credit payment system on or before the twentieth day of the calendar month following the month in which it accrues, coinciding with the filing of the statement provided for in section 431:7-201.

In addition to the monthly tax and monthly tax statement, the annual tax shall be due and payable by electronic payment via the Automated Clearing House debit or credit payment system on or before March 1 coinciding with the filing of the statement provided for in section 431:7-201.

All amounts paid under this subsection, other than fines, shall be allowed as a credit on the annual tax imposed by subsections (a), (b), (c), and (d).

If the total amount of installment payments for any calendar year exceeds the amount of annual tax for that year, the excess shall be treated as an overpayment of the annual tax and be allowed as a refund under section 431:7-203.

Any insurer failing or refusing to pay the required taxes above stated when due and payable shall be liable for a fine of \$500 or ten per cent of the tax due, whichever is greater; plus interest at a rate of twelve per cent per annum on the delinquent taxes. The taxes may be collected by distraint, or the taxes, fine, and interest may be recovered by an action to be instituted by the commissioner in the name of this State, in any court of competent jurisdiction. The commissioner may suspend the certificate of authority of the delinquent insurer until the taxes, fine, and interest, should any be imposed, are fully paid.

As used in this subsection, “Automated Clearing House debit or credit payment system” means the network for the interbank clearing of electronic payments for participating depository financial institutions.”

SECTION 5. Section 431:10-104, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10-104 General readability requirements.** In addition to any other requirements of law, no contract shall be delivered or issued for delivery in this State unless:

- (1) The text is in plain language, achieving a minimum score of forty on the Flesch reading ease test or an equivalent score on any other comparable test prescribed by the commissioner under section 431:10-105(a);
- (2) The contract is printed, except for specification pages, schedules, and tables, in not less than ten point type, one point leaded;

- (3) The style, arrangement, and general appearance of the contract ~~[gives]~~ give no undue prominence to any endorsements, riders, or other portions of the text; ~~[and]~~
- (4) A table of contents or index of principal sections is provided with the contract when the text consists of more than three thousand words printed on three or less pages or when the text has more than three pages regardless of the total number of printed words[-]; and
- (5) For any short-term health insurance policies that impose preexisting conditions provisions, any policy, application, or sales brochure shall disclose in a conspicuous manner in not less than fourteen point bold face type the following statement:
“THIS POLICY EXCLUDES COVERAGE FOR CONDITIONS FOR WHICH MEDICAL ADVICE, DIAGNOSIS, CARE, OR TREATMENT WAS RECOMMENDED OR RECEIVED DURING THE [insert exclusion period] IMMEDIATELY PRECEDING THE EFFECTIVE DATE OF COVERAGE.””

SECTION 6. Section 431:10A-116.6, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) For purposes of this section:

“Contraceptive services” means physician-delivered, physician-supervised, physician assistant-delivered, ~~[nurse practitioner-delivered, certified nurse-midwife-delivered,]~~ advanced practice registered nurse-delivered, nurse-delivered, or pharmacist-delivered medical services intended to promote the effective use of contraceptive supplies or devices to prevent unwanted pregnancy.

“Contraceptive supplies” means all United States Food and Drug Administration-approved contraceptive drugs or devices used to prevent unwanted pregnancy.”

SECTION 7. Section 431:10A-116.7, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) For purposes of this section:

“Contraceptive services” means physician-delivered, physician-supervised, physician assistant-delivered, ~~[nurse practitioner-delivered, certified nurse-midwife-delivered,]~~ advanced practice registered nurse-delivered, nurse-delivered, or pharmacist-delivered medical services intended to promote the effective use of contraceptive supplies or devices to prevent unwanted pregnancy.

“Contraceptive supplies” means all United States Food and Drug Administration-approved contraceptive drugs or devices used to prevent unwanted pregnancy.”

SECTION 8. Section 431:10A-206.5, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read as:

“(a) All accident and health or sickness insurance policies issued in this State~~[-, which]~~ that provide coverage for the children of the insured shall provide coverage for child health supervision services from the moment of birth through age five years. These services shall be exempt from any deductible provisions, and immunizations shall be exempt from any copayment provisions, which may be in force in these policies or contracts.”

2. By amending subsection (e) to read:

“(e) For the purposes of this section, “child health supervision services” means physician-delivered, physician-supervised, ~~physician assistant-delivered,~~ or nurse-delivered services as defined by section 457-2 (“registered nurse”),

which shall include as the minimum benefit coverage for services delivered at intervals and scope stated in this section.”

SECTION 9. Section 431:13-108, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) If a claim is contested or denied or requires more time for review by an entity, the entity shall notify the health care provider, insured, or member filing a claim from a non-contracted provider in writing or electronically not more than fifteen calendar days after receiving a claim filed in writing, or not more than seven calendar days after receiving a claim filed electronically, as appropriate. The notice shall identify the contested portion of the claim and the specific reason for contesting or denying the claim, and may request additional information; provided that a notice shall not be required if the entity provides a reimbursement report containing the information, at least monthly, to the health care provider.”

SECTION 10. Section 431:19-304, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§431:19-304]]** **Qualification of sponsors.** A sponsor of a sponsored captive insurance company shall be an insurer licensed under laws of any state, a reinsurer authorized or approved under the laws of any state, a captive insurance company formed or licensed under this article, or any other person, company, or organization approved by the commissioner in the exercise of the commissioner’s discretion, after finding that the approval of that person, company, or organization as a sponsor is not inconsistent with the purposes of this article. A risk retention group shall not be ~~[either]~~ a sponsor ~~[or a participant]~~ of a sponsored captive insurance company.”

SECTION 11. Section 431:19-305, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Associations, corporations, limited liability companies, partnerships, trusts, risk retention groups, and other business entities may be participants in any sponsored captive insurance company formed or licensed under this chapter.”

SECTION 12. Section 431M-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Licensed dietitian” means a person who uses the title of licensed dietitian or dietitian and has been licensed to practice dietetics under chapter 448B.”

SECTION 13. Section 431M-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Mental illness benefits.

- (1) Covered benefits for mental health services set forth in this subsection shall be limited to coverage for diagnosis and treatment of mental disorders. All mental health services shall be provided under an individualized treatment plan approved by a physician, psychologist, licensed clinical social worker, marriage and family therapist, licensed mental health counselor, ~~[or]~~ advanced practice registered nurse, or licensed dietitian treating eating disorders, and must be reasonably expected to improve the patient’s condition. An individualized treatment plan approved by a licensed clinical social worker, marriage and family therapist, licensed mental health counselor, ~~[or]~~

- ~~an~~] advanced practice registered nurse, or a licensed dietitian treating eating disorders, for a patient already under the care or treatment of a physician or psychologist shall be done in consultation with the physician or psychologist;
- (2) In-hospital and nonhospital residential mental health services as a covered benefit under this chapter shall be provided in a hospital or a nonhospital residential facility. The services to be covered shall include those services required for licensure and accreditation;
 - (3) Mental health partial hospitalization as a covered benefit under this chapter shall be provided by a hospital or a mental health outpatient facility. The services to be covered under this paragraph shall include those services required for licensure and accreditation; and
 - (4) Mental health outpatient services shall be a covered benefit under this chapter.”

SECTION 14. Section 431P-10, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) ~~Upon the authorization of the commissioner, insurers may~~ Insurers seeking to provide ~~[standard extended] multi-peril coverage [endorsements]~~ for residential property, including ~~multi-peril coverage of the hurricane [risks,] peril,~~ subject to the fund’s program for incentives and ~~credits[,]~~ shall submit to the commissioner a written request for permission to write the coverage; provided that in the absence of such authorization, no other policy of residential property insurance or endorsement to a policy of residential property insurance on eligible residential property located in this State shall be issued to provide insurance for damages or losses caused by a covered event if such coverage is less than that offered by the fund. If ~~[standard extended] multi-peril coverage [endorsements]~~ on commercial property ~~[are] is~~ no longer being offered by the fund, any ~~[standard extended] multi-peril coverage [endorsements]~~ on commercial property offered by an insurer shall qualify as a comparable coverage under section 431P-5(b)(8)(A). ~~[Standard extended] Multi-peril coverage [endorsements]~~ on residential property which include coverage for hurricane losses offered by an insurer shall qualify as a comparable coverage under section 431P-5(b)(8)(A).”

SECTION 15. Section 431R-5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§431R-5]]~~ **Violations; penalties.** (a) The insurance commissioner may assess a fine of up to \$10,000 for each violation by a pharmacy benefit manager or prescription drug benefit plan provider who is in violation of section 431R-2 or 431R-3. In addition, the insurance commissioner may order the pharmacy benefit manager to take specific affirmative corrective action or make restitution.

(b) Failure of a pharmacy benefit manager to comply with a previously agreed upon contractual retail pharmacy network agreement pursuant to section 431R-2 or 431R-3 shall be an unfair or deceptive act or practice as provided in section 431:13-102.

(c) A pharmacy benefit manager or prescription drug benefit plan provider may appeal any decision made by the insurance commissioner in accordance with chapter 91.

(d) Every person and its officers, employees, and representatives subject to investigation or examination by the commissioner under this chapter shall produce and make freely accessible to the commissioner the accounts, records, documents, and files in the person’s possession or control relating to the subject

of the investigation or examination and shall otherwise facilitate the investigation or examination.

(e) Every person and its officers, employees, and representatives subject to investigation or examination by the commissioner under this chapter shall issue a written response no later than fifteen working days after receiving a written inquiry from the commissioner regarding a claim or complaint. The response shall be more than an acknowledgment that the commissioner's communication has been received and shall adequately address the concerns stated in the communication."

SECTION 16. Section 432:1-102, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Article 2, article 2D, parts II and IV of article 3, article 6, part III of article 7, article 9A, article 13, article 14G, and article 15 of chapter 431, sections 431:3-301, 431:3-302, 431:3-303, 431:3-304, 431:3-305, ~~and~~ 431:10-102, 431:10-225, 431:10-226.5, and 431:10A-116(1) and (2), and the powers granted by those provisions to the commissioner, shall apply to managed care plans, health maintenance organizations, or medical indemnity or hospital service associations that are owned or controlled by mutual benefit societies so long as the application in any particular case is in compliance with and is not preempted by applicable federal statutes and regulations."

SECTION 17. Section 432:1-602.5, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) For the purposes of this section, "child health supervision services" means physician-delivered, physician-supervised, physician assistant-delivered, or nurse-delivered services as defined by section 457-2 ("registered nurse"), which shall include as the minimum benefit coverage for services delivered at intervals and scope stated in this section."

SECTION 18. Section 432:1-604.5, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) For purposes of this section:
"Contraceptive services" means physician-delivered, physician-supervised, physician assistant-delivered, ~~nurse practitioner-delivered, certified nurse midwife-delivered, or~~ advanced practice registered nurse-delivered, nurse-delivered ~~medical services,~~¹ or pharmacist-delivered medical services intended to promote the effective use of contraceptive supplies or devices to prevent unwanted pregnancy.

"Contraceptive supplies" means all Food and Drug Administration-approved contraceptive drugs or devices used to prevent unwanted pregnancy."

SECTION 19. Section 432D-14, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) In addition to, or in lieu of, suspension or revocation of a certificate of authority pursuant to this section, the commissioner~~[-after hearing,]~~ may levy an administrative fine upon the health maintenance organization in an amount not less than \$500 and not more than \$50,000 pursuant to section 431:3-221."

SECTION 20. Section 432D-19, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Article 2, article 2D, part IV of article 3, article 6, part III of article 7, article 9A, article 13, article 14G, and article 15 of chapter 431, and sections 431:3-301, 431:3-302, 431:3-303, 431:3-304, ~~and~~ 431:3-305, 431:10-225, and

431:10-226.5, and the powers granted by those provisions to the commissioner shall apply to health maintenance organizations, so long as the application in any particular case is in compliance with and is not preempted by applicable federal statutes and regulations.”

SECTION 21. Section 431P-17, Hawaii Revised Statutes, is repealed.

SECTION 22. Statutory material to be repealed is bracketed and stricken.² New statutory material is underscored.

SECTION 23. This Act shall take effect on July 1, 2016; provided that sections 3 and 4 shall take effect on January 1, 2017.

(Approved June 29, 2016.)

Notes

1. Comma should be underscored.
2. Edited pursuant to HRS §23G-16.5.