ACT 151

S.B. NO. 952

A Bill for an Act Relating to Insurance.

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

SECTION 1. The purpose of this Act is to provide the insurance commissioner with express prior approval authority over long-term care insurance rates.

SECTION 2. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to part II of article 10H to be appropriately designated and to read as follows:

"**§431:10H- Disapproval of filings.** If the commissioner finds that a filing does not meet the requirements of this chapter in whole or in part and disapproves the filing, a written request for a hearing may be filed pursuant to section 431:14G-112. The insurer shall bear the burden of proving that the filing meets the requirements of this article."

SECTION 3. Section 431:10H-104, Hawaii Revised Statutes, is amended by amending the definition of "incidental" to read as follows:

""Incidental", as used in section [~~431:10H-207.5(j),~~] 431:10H-207.5(l), means that the value of the long-term care benefits provided is less than ten per cent of the total value of the benefits provided over the life of the policy. These values shall be measured as of the date of issue."

SECTION 4. Section 431:10H-207.5, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~]**§431:10H-207.5[~~§~~] Premium rate schedule increases.** (a) This section shall apply as follows:

(1) Except as provided in paragraph (2), this section applies to any long-term care policy or certificate issued in this State after December 31, 2007; and

(2) For certificates issued after June 30, 2007, under a group long-term care insurance policy, as defined in paragraph (1) of the definition of "group long-term care insurance" in section 431:10H-104, which policy was in force on July 1, 2007, this section shall apply on the policy anniversary following July 1, 2007.

(b) An insurer shall [~~provide notice of a pending~~] request approval from the commissioner of a premium rate schedule increase, including an exceptional increase, [~~to the commissioner~~] at least [~~thirty~~] sixty days prior to the notice to the policyholders and shall include:

(1) Information required by section 431:10H-221;

(2) A certification by a qualified actuary that:

(A) If the requested premium rate schedule increase is implemented and the underlying assumptions[~~, which~~] that reflect moderately adverse conditions[~~,~~] are realized, no further premium rate schedule increases are anticipated; and

(B) The premium rate filing [~~is in compliance~~] complies with this section;

(3) An actuarial memorandum justifying the rate schedule change request that includes:

(A) Lifetime projections of earned premiums and incurred claims based on the filed premium rate schedule increase and the method and assumptions used [~~in determining~~] to determine the projected values, including reflection of any assumptions that deviate from those used for pricing other forms currently available for sale; provided that:

(i) Annual values for the five years preceding and the three years following the valuation date shall be provided separately;

(ii) The projections shall include the development of the lifetime loss ratio, unless the rate increase is an exceptional increase;

(iii) The projections shall demonstrate compliance with subsection (c); and

(iv) For exceptional increases, the projected experience should be limited to the increases in claims expenses attributable to the approved reasons for the exceptional increase. If the commissioner determines, as provided in paragraph (4) of the definition of "exceptional increase" in section

431:10H-104, that offsets may exist, the insurer shall use appropriate net projected experience;

(B) Disclosure of how reserves have been incorporated in this rate increase whenever the rate increase will trigger a contingent benefit upon lapse;

(C) Disclosure of the analysis performed to determine why a rate adjustment is necessary, which pricing assumptions were not realized and why, and what other actions taken by the company have been relied on by the actuary;

(D) A statement that policy design, underwriting, and claims adjudication practices have been taken into consideration; and

(E) [~~If it is necessary to maintain consistent premium rates for new certificates and certificates receiving a rate increase, the insurer shall file composite~~] Composite rates reflecting projections of new certificates[~~;~~], if it is necessary to maintain consistent premium rates for new certificates and certificates receiving a rate increase;

(4) A statement that renewal premium rate schedules are not greater than new business premium rate schedules except for differences attributable to benefits, unless sufficient justification is provided to the commissioner; and

(5) Sufficient information for [~~the review~~] approval by the commissioner of the premium rate schedule increase [~~by the commissioner~~].

(c) All premium rate schedule increases shall be determined in accordance with the following requirements:

(1) Exceptional increases shall provide that seventy per cent of the present value of projected additional premiums from the exceptional increase shall be returned to policyholders in benefits;

(2) Premium rate schedule increases shall be calculated so that the sum of the accumulated value of incurred claims, without the inclusion of active life reserves, and the present value of future projected incurred claims, without the inclusion of active life reserves, will not be less than the sum of the following:

(A) The accumulated value of the initial earned premium times fifty-eight per cent;

(B) Eighty-five per cent of the accumulated value of prior premium rate schedule increases on an earned basis;

(C) The present value of future projected initial earned premiums times fifty-eight per cent; and

(D) Eighty-five per cent of the present value of future projected premiums not in subparagraph (C) on an earned basis;

(3) If a policy form has both exceptional and other increases, the values in paragraph (2)(B) and (D) shall also include seventy per cent for exceptional rate increase amounts; and

(4) All present and accumulated values used to determine rate increases shall use the maximum valuation interest rate for contract reserves, as applicable, as specified in sections 431:5-303 and 431:5-307. The actuary shall disclose as part of the actuarial memorandum the use of any appropriate averages.

(d) For each rate increase that is implemented, the insurer shall file for review by the commissioner updated projections, as provided in subsection (b)(3)(A), annually for the next three years, and include a comparison of actual results to projected values. The commissioner may extend the period to greater than three years if actual results are not consistent with projected values from prior projec-

tions. For group insurance policies that meet the conditions in subsection [~~(k),~~] (m), the projections required by this subsection shall be provided to the policyholder in lieu of filing with the commissioner.

(e) If any premium rate in the revised premium rate schedule is greater than two hundred per cent of the comparable rate in the initial premium schedule, lifetime projections, as provided in subsection (b)(3)(A), shall be filed for review by the commissioner every five years following the end of the required period in subsection (d). For group insurance policies that meet the conditions in subsection [~~(k),~~] (m), the projections required by this subsection shall be provided to the policyholder in lieu of filing with the commissioner.

(f) If the commissioner has determined that the actual experience following a rate increase does not adequately match the projected experience and that the current projections under moderately adverse conditions demonstrate that incurred claims will not exceed proportions of premiums specified in subsection (c), the commissioner may require the insurer to implement any of the following:

(1) Premium rate schedule adjustments; or

(2) Other measures to reduce the difference between the projected and actual experience.

In determining whether the actual experience adequately matches the projected experience, consideration should be given to subsection (b)(3)(E), if applicable.

(g) If the majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse, the insurer shall file:

(1) A plan, subject to the commissioner's approval, for improved administration or claims processing designed to eliminate the potential for further deterioration of the policy form requiring further premium rate schedule increases, or both, or to demonstrate that appropriate administration and claims processing have been implemented or are in effect; otherwise the commissioner may impose the condition in subsection (h); and

(2) The original anticipated lifetime loss ratio and the premium rate schedule increase that would have been calculated according to subsection (c), had the greater of the original anticipated lifetime loss ratio or fifty-eight per cent been used in the calculations described in subsection (c)(2)(A) and (C).

(h) For a rate increase filing that meets the following criteria, the commissioner shall review, for all policies included in the filing, the projected lapse rates and past lapse rates during the twelve months following each increase to determine if significant adverse lapsing has occurred or is anticipated:

(1) The rate increase is not the first rate increase requested for the specific policy form or forms;

(2) The rate increase is not an exceptional increase; and

(3) The majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse.

If significant adverse lapsing has occurred, is anticipated in the filing, or is evidenced in the actual results as presented in the updated projections provided by the insurer following the requested rate increase, the commissioner may determine that a rate spiral exists. Following the determination that a rate spiral exists, the commissioner may require the insurer to offer, without underwriting, to all in force insureds, subject to the rate increase, the option to replace existing coverage with one or more reasonably comparable products being offered by the insurer or its affiliates; provided that the offer shall be subject to the approval of the commissioner, be based on actuarially sound principles but not on attained

age, and provide that maximum benefits under any new policy accepted by an insured shall be reduced by comparable benefits already paid under the existing policy.

The insurer shall maintain the experience of all the replacement insureds separate from the experience of insureds originally issued the policy forms. In the event of a request for a rate increase on the policy form, the rate increase shall be limited to the lesser of the maximum rate increase determined based on the combined experience or the maximum rate increase determined based only on the experience of the insureds originally issued the form plus ten per cent.

(i) When a filing is not accompanied by supporting information or the commissioner does not have sufficient information to determine whether the filing meets the requirements of this article, the commissioner shall require the insurer to furnish additional information, and the waiting period shall commence as of the date the information is furnished. Until the requested information is provided, the filing shall not be deemed complete or filed, and the filing shall not be used by the insurer. If the requested information is not provided within a reasonable time period, the filing may be returned to the insurer as not filed and not available for use.

(j) Except as provided in this subsection, each filing shall be on file for a waiting period of sixty days before the filing becomes effective. The waiting period may be extended by the commissioner for not more than fifteen days if the commissioner gives written notice within the waiting period to the insurer that made the filing that the commissioner needs additional time to consider the filing. Upon written application by the insurer, the commissioner may authorize a filing that the commissioner has reviewed to become effective before the expiration of the waiting period or any extension thereof. A filing shall be deemed to meet the requirements of this article unless disapproved by the commissioner, as provided in section 431:10H- , within the waiting period or any extension thereof. The rates shall be deemed to meet the requirements of this article until the time the commissioner reviews the filing and so long as the filing remains in effect.

[~~(i)~~] (k) If the commissioner determines that the insurer has exhibited a persistent practice of filing inadequate initial premium rates for long-term care insurance, the commissioner, in addition to subsection (h), may prohibit the insurer from either of the following:

(1) Filing and marketing comparable coverage for a period of up to five years; or

(2) Offering all other similar coverages and limiting marketing of new applications to the products subject to recent premium rate schedule increases.

[~~(j)~~] (l) Subsections (a) to [~~(i)~~] (k) shall not apply to policies for which the long-term care benefits provided by the policy are incidental, as defined in section 431:10H-104, if the policy complies with all of the following [~~provisions~~]:

(1) The interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;

(2) The portion of the policy that provides insurance benefits, other than long-term care coverage, meets the nonforfeiture requirements as applicable in any of the following:
   (A) Section 431:10D-104; and
   (B) Section 431:10D-107;

(3) The policy meets the disclosure requirements of sections 431:10H-113 and 431:10H-114;

(4) The portion of the policy that provides insurance benefits, other than long-term care coverage, meets the requirements as applicable in the following:
   (A) Policy illustrations as required by part IV of article 10D; and
   (B) Disclosure requirements, as applicable, in article [~~I~~]10D[~~I~~]; and
(5) An actuarial memorandum is filed with the commissioner that includes:
   (A) A description of the basis on which the long-term care rates were determined;
   (B) A description of the basis for the reserves;
   (C) A summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;
   (D) A description and a table of each actuarial assumption used. For expenses, an insurer shall include per cent of premium dollars per policy and dollars per unit of benefits, if any;
   (E) A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;
   (F) The estimated average annual premium per policy and the average issue age;
   (G) A statement as to whether underwriting is performed at the time of application. The statement shall indicate whether underwriting is used and, if used, the statement shall include a description of the type or types of underwriting used, such as medical underwriting or functional assessment underwriting. Concerning a group policy, the statement shall indicate whether the enrollee or any dependent will be underwritten and when that underwriting occurs; and
   (H) A description of the effect of the long-term care policy provision on the required premiums, nonforfeiture values, and reserves on the underlying insurance policy, both for active lives and those in long-term care claim status.

[~~(k)~~] (m) Subsections (f) and (h) shall not apply to group insurance policies as defined in paragraph (1) of the definition of "group long-term care insurance" in section 431:10H-104 where:
(1) The policies insure two hundred fifty or more persons and the policyholder has five thousand or more eligible employees of a single employer; or
(2) The policyholder, and not the certificate holders, pays a material portion of the premium[~~, which~~] that shall not be less than twenty per cent of the total premium for the group in the calendar year prior to the year a rate increase is filed.

[~~(l)~~] (n) "Exceptional increase", for purposes of this section, shall be as defined in section 431:10H-104."

SECTION 5. Section 431:10H-226, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Benefits under long-term care insurance policies shall be deemed reasonable in relation to premiums; provided that the expected loss ratio is at least sixty per cent[~~,~~] and calculated in a manner that provides for adequate reserving of the long-term care insurance risk. [~~In evaluating~~] Prior to any approval, the commissioner shall evaluate the expected loss ratio, and due consideration shall be given to all relevant factors, including:

(1) Statistical credibility of incurred claims experience and earned premiums;
(2) The period for which rates are computed to provide coverage;
(3) Experienced and projected trends;
(4) Concentration of experience within early policy duration;
(5) Expected claim fluctuation;
(6) Experience refunds, adjustments, or dividends;
(7) Renewability features;
(8) All appropriate expense factors;
(9) Interest;
(10) Experimental nature of the coverage;
(11) Policy reserves;
(12) Mix of business by risk classification, if applicable; and
(13) Product features such as long elimination periods, high deductibles, and high maximum limits."

SECTION 6. Section 431:10H-226.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) An insurer shall provide the information listed in this subsection to the commissioner [~~thirty~~] for approval sixty days prior to making a long-term care insurance form available for sale as follows:

(1) A copy of the disclosure documents required in section 431:10H-217.5; and
(2) An actuarial certification consisting of at least the following:
  (A) A statement that the initial premium rate schedule is sufficient to cover anticipated costs under moderately adverse experience and that the premium rate schedule is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated;
  (B) A statement that the policy design and coverage provided have been reviewed and taken into consideration;
  (C) A statement that the underwriting and claims adjudication processes have been reviewed and taken into consideration;
  (D) A complete description of the basis for contract reserves that are anticipated to be held under the form[~~, to include:~~] and that includes:
    (i) Sufficient detail or sample calculations [~~provided so as~~] to have a complete depiction of the reserve amounts to be held;
    (ii) A statement that the assumptions used for reserves contain reasonable margins for adverse experience;
    (iii) A statement that the net valuation premium for renewal years does not increase, [~~(~~]except for attained-age rating where permitted[~~)~~]; and
    (iv) A statement that the difference between the gross premium and the net valuation premium for renewal years is sufficient to cover expected renewal expenses; or if that statement cannot be made, a complete description of the situations where this does not occur; provided that an aggregate distribution of anticipated issues may be used as long as the underlying gross premiums maintain a reasonably consistent relationship; provided further that if the gross premiums for certain age groups are inconsistent with this requirement, the commissioner may request a

demonstration under subsection (c) based on a standard age distribution; and

(E) With respect to premium rate schedules:

(i) A statement that the premium rate schedule is not less than the premium rate schedule for existing similar policy forms also available from the insurer, except for reasonable differences attributable to benefits; or

(ii) A comparison of the premium schedules for similar policy forms that are currently available from the insurer, with an explanation of the differences."

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.[1]

SECTION 8. This Act shall take effect on January 1, 2018.

(Approved July 10, 2017.)

Note

1. Edited pursuant to HRS §23G-16.5.