
A BILL FOR AN ACT

RELATING TO MUTUAL BENEFIT SOCIETIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that mutual benefit
2 societies hold a unique position in the State's economy and
3 business community. Mutual benefit societies are organized and
4 carried on for the primary benefit of their members and their
5 beneficiaries and not for profit. As a result, mutual benefit
6 societies are exempted from many laws that apply to insurance
7 companies. In addition to these insurance code exemptions,
8 mutual benefit societies are either exempt from certain state
9 taxes or receive preferential tax treatment. However, mutual
10 benefit societies are self-controlling and the operation of a
11 mutual benefit society is in the sole and self-perpetuating
12 control of its management. The management of a mutual benefit
13 society does not have to answer either to shareholders or, in
14 reality, to its members. Due to the limited application of the
15 insurance code, the insurance commissioner has correspondingly
16 limited supervisory authority. The legislature finds that there
17 is no good reason to treat mutual benefit societies differently
18 from insurance companies, especially since these entities



1 receive preferential tax status and are answerable to their
2 membership in only a very limited fashion.

3 The purpose of this Act is to ensure that mutual benefit
4 societies operate for the primary benefit of members and their
5 beneficiaries by requiring that mutual benefit societies'
6 contracts with members, groups, and participating providers
7 contain a grievance procedure approved by the insurance
8 commissioner.

9 SECTION 2. Article 1 of chapter 432, Hawaii Revised
10 Statutes, is amended by adding a new section to be appropriately
11 designated and to read as follows:

12 "§432:1- Grievance procedures. (a) Every plan or
13 contract between a mutual benefit society and its members,
14 groups, or participating providers shall be in writing and shall
15 contain a grievance procedure, which shall be approved by the
16 commissioner, to approve grievances. The commissioner may
17 disapprove of a grievance procedure if the commissioner finds
18 that the procedure contains provisions that are unjust, unfair,
19 inequitable, misleading, contrary to law, or contrary to public
20 policy.

21 (b) After exhausting all internal complaint and appeal
22 procedures available, a member, the member's treating provider

1 or appointed representative, a group, or a participating
2 provider aggrieved by the operation or governance of the mutual
3 benefit society may apply to the commissioner for relief. The
4 commissioner, after notice and opportunity for hearing, may
5 order any equitable relief appropriate to protect the rights of
6 the member, group, or participating provider as the commissioner
7 deems appropriate.

8 (c) The commissioner may examine and investigate the
9 affairs of the mutual benefit society in order to determine
10 whether the grievance should be accorded relief.

11 (d) Hearings shall be conducted and orders shall be issued
12 as provided in article 13 of chapter 431.

13 (e) Notwithstanding any other provision of this article,
14 if a mutual benefit society fails to comply with an order of the
15 commissioner, the commissioner may take appropriate action to
16 ensure that the continued operation of the mutual benefit
17 society will be for the benefit of its members. Appropriate
18 action by the commissioner may include any applicable penalty
19 provided in section 432:1-105 or in articles 2 or 13 of chapter
20 431. In addition, the following penalties may also be imposed
21 by the commissioner:



1 (1) Denial of an application for a certificate of
2 authority or revocation of a previously issued
3 certificate of authority if the commissioner
4 determines that the mutual benefit society's bylaws or
5 constitution insufficiently protects the rights of its
6 members and the mutual benefit society fails to amend
7 its bylaws or constitution in a manner that is
8 acceptable to the commissioner;

9 (2) Revocation of the tax exemption provided to the mutual
10 benefit society under subsection 432:1-403; and

11 (3) Prohibition of further soliciting and enrolling of
12 members.

13 (f) Nothing in this section shall require the insurance
14 commissioner to disclose any information or records that would
15 indicate or show the existence or content of any investigation
16 or activity of a criminal justice agency.

17 (g) The procedure set forth in this section shall not
18 apply to claims or allegations of health provider malpractice,
19 professional negligence, or other professional fault against
20 participating providers.

21 (h) An aggrieved party may be allowed, at the
22 commissioner's discretion, an award of a reasonable sum for



1 attorneys' fees and reasonable costs incurred in connection with
2 the grievance made under this section, unless the commissioner,
3 in an administrative proceeding, determines that the grievance
4 was unreasonable, fraudulent, excessive, or frivolous.

5 (i) All remedies, penalties, and proceedings in articles 2
6 and 13 of chapter 431 made applicable to mutual benefit
7 societies pursuant to this section shall be invoked and enforced
8 solely and exclusively by the commissioner.

9 (j) Any order of the commissioner issued under this
10 section shall be considered a final administrative decision,
11 served upon the society by certified mail, and may be appealed
12 pursuant to chapter 91."

13 SECTION 3. Section 432:1-104, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§432:1-104 Definitions.** For the purposes of this
16 article:

17 [~~(1) Commissioner~~] "Commissioner" means the insurance
18 commissioner of the State of Hawaii.

19 "Grievance" means a written complaint submitted in
20 accordance with the mutual benefit society's formal grievance
21 procedure by or on behalf of a member, a group or a
22 participating provider.



1 "Health and medical insurance" is insurance that provides
2 for the payment of benefits for health care services or
3 preventive health care services and every insurance appertaining
4 thereto.

5 "Health care provider" means a provider of health care
6 services, benefits, or supplies.

7 "Health care services" includes medical services, mental
8 health services, dental services, and vision services.

9 "Insolvent" or "insolvency" means that the mutual benefit
10 society has been declared insolvent and placed under an order of
11 supervision, rehabilitation, or liquidation by a court of
12 competent jurisdiction.

13 "Member" means an individual who is covered by a mutual
14 benefit society, including the subscribing member's dependants
15 and beneficiaries.

16 ~~[-2) Mutual benefit society is any corporation,~~
17 ~~unincorporated association, society, or entity:~~

18 ~~(A) Organized and carried on for the primary benefit~~
19 ~~of its members and their beneficiaries and not~~
20 ~~for profit, and:~~

21 ~~(i) Making provision for the payment of benefits~~
22 ~~in case of sickness, disability, or death of~~



1 ~~its members, or disability, or death of its~~
2 ~~members' spouses or reciprocal beneficiaries~~
3 ~~or children, or~~

4 ~~(ii) Making provision for the payment of any~~
5 ~~other benefits to or for its members,~~
6 ~~whether or not the amount of the benefits is~~
7 ~~fixed or rests in the discretion of the society,~~
8 ~~its officers, or any other person or persons; and~~
9 ~~the fund from which the payment of the benefits~~
10 ~~shall be defrayed is derived from assessments or~~
11 ~~dues collected from its members, and the payment~~
12 ~~of death benefits is made to the families~~
13 ~~including reciprocal beneficiaries, heirs, blood~~
14 ~~relatives, or persons named by its members as~~
15 ~~their beneficiaries; or~~

16 ~~(B) Organized and carried on for any purpose, which:~~
17 ~~(i) Regularly requires money to be paid to it by~~
18 ~~its members, whether the money be in the~~
19 ~~form of dues, subscriptions, receipts,~~
20 ~~contributions, assessments or otherwise, and~~
21 ~~(ii) Provides for the payment of any benefit or~~
22 ~~benefits or the payment of any money or the~~



1 ~~delivery of anything of value to its members~~
 2 ~~or their relatives including reciprocal~~
 3 ~~beneficiaries, or to any person or persons~~
 4 ~~named by its members as their beneficiaries,~~
 5 ~~or to any class of persons which includes or~~
 6 ~~may include its members,~~

7 ~~whether or not the amount or value of the~~
 8 ~~benefit, benefits, money, or thing of value is~~
 9 ~~fixed, or rests in the discretion of the society,~~
 10 ~~its officers, or any other person or persons; or~~

11 ~~(C) Organized and carried on for any purpose, whose~~
 12 ~~requirements and provisions although not~~
 13 ~~identical with, are determined by the~~
 14 ~~commissioner to be substantially similar to,~~
 15 ~~those enumerated in subparagraphs (A) and (B).~~

16 ~~Participating in a prepaid legal service plan subject~~
 17 ~~to chapter 488 shall not in itself make a corporation,~~
 18 ~~unincorporated association, society, or entity a~~
 19 ~~mutual benefit society and subject to this article.]~~

20 "Mutual benefit society" is any corporation, unincorporated
 21 association, society, or entity:



1 (1) Organized and carried on for the primary benefit of
 2 its members and not for profit and providing health
 3 and medical insurance or making provision for other
 4 benefits; or

5 (2) Organized and carried on for the primary benefit of
 6 its members and not for profit for any purpose, whose
 7 requirements and provisions, although not identical
 8 with, are determined by the commissioner to be
 9 substantially similar to those enumerated in paragraph
 10 (1).

11 Participating in a prepaid legal service plan subject to chapter
 12 488 shall not in itself make a corporation, unincorporated
 13 association, society, or entity a mutual benefit society subject
 14 to this article.

15 "Participating provider" means a licensed or certified
 16 health care provider that has entered into an agreement with a
 17 mutual benefit society or a managed care plan to provide
 18 services, benefits, or supplies to plan members."

19 SECTION 4. Statutory material to be repealed is bracketed
 20 and stricken. New statutory material is underscored.



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

2

INTRODUCED BY: *Bw Hansen*

JAN 25 2006



HB 2752

Report Title:

Mutual Benefit Societies; Grievance Procedures

Description:

Requires mutual benefit societies to establish grievance procedures approved by the insurance commissioner.

