

JAN 25 2006

S.B. NO. **3052**

A BILL FOR AN ACT

RELATING TO LONG-TERM CARE INSURANCE.

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

1 SECTION 1. Chapter 431, Hawaii Revised Statutes, is
2 amended by adding two new sections to part I of article 10H to
3 be appropriately designated and to read as follows:

4 "§431:10H-A Denial of claims; compliance requirements.

5 (a) If a claim under a long-term care insurance contract is
6 denied, the issuer, within sixty days of the date of a written
7 request by the policyholder or certificate holder or a
8 representative, shall:

9 (1) Provide a written explanation of the reasons for the
10 denial; and

11 (2) Make available all information directly related to the
12 denial.

13 (b) Any policy or rider advertised, marketed, or offered
14 as long-term care or nursing home insurance shall comply with
15 this article.

16 §431:10H-B Delivery of the contract or certificate of
17 insurance. If an application for a long-term care insurance
18 contract or certificate is approved, the issuer shall deliver



1 the contract or certificate of insurance to the applicant no
2 later than thirty days after the date of approval."

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

6 **"§431:10H-C Electronic enrollment for group policies. (a)**

7 In the case of a group defined in paragraph (1) of the
8 definition of "group long-term care insurance" in section
9 431:10H-104, any requirement that a signature of an insured be
10 obtained by an agent or insurer shall be deemed satisfied if:

11 (1) The consent is obtained by electronic enrollment by
12 the group policyholder or insurer. A verification of
13 enrollment information shall be provided to the
14 enrollee;

15 (2) The electronic enrollment provides necessary and
16 reasonable safeguards to assure the accuracy,
17 retention, and prompt retrieval of records; and

18 (3) The electronic enrollment provides necessary and
19 reasonable safeguards to assure that the
20 confidentiality of individually identifiable
21 information and privileged information is maintained.



1 (b) The insurer shall make available, upon request of the
2 commissioner, records that demonstrate the insurer's ability to
3 confirm enrollment and coverage amounts.

4 **§431:10H-D Required disclosure of rating practices to**
5 **consumers.** (a) This section shall apply as follows:

6 (1) Except as provided in paragraph (2), this section
7 applies to any long-term care policy or certificate
8 issued in this State after December 31, 2006; and

9 (2) For certificates issued on or after the effective date
10 of this amended regulation under a group long-term
11 care insurance policy as defined in paragraph (1) of
12 the definition of "group long-term care insurance" in
13 section 431:10H-104, which policy was in force at the
14 time this amended regulation became effective, this
15 section shall apply on the policy anniversary
16 following July 1, 2007.

17 (b) Other than policies for which no applicable premium
18 rate or rate schedule increases can be made, insurers shall
19 provide all of the information listed in this subsection to the
20 applicant at the time of application or enrollment, unless the
21 method of application does not allow for delivery at that time.



1 In such a case, an insurer shall provide all of the information
2 listed in this subsection to the applicant no later than at the
3 time of delivery of the policy or certificate as follows:

4 (1) A statement that the policy may be subject to rate
5 increases in the future;

6 (2) An explanation of potential future premium rate
7 revisions, and the policyholder's or certificate
8 holder's option in the event of a premium rate
9 revision;

10 (3) The premium rate or rate schedules applicable to the
11 applicant that will be in effect until a request is
12 made for an increase;

13 (4) A general explanation for applying premium rate or
14 rate schedule adjustments that shall include:

15 (A) A description of when premium rate or rate
16 schedule adjustments will be effective (e.g.,
17 next anniversary date, next billing date, etc.);

18 and

19 (B) The right to a revised premium rate or rate
20 schedule as provided in paragraph (3) if the
21 premium rate or rate schedule is changed;



- 1 (5) (A) Information regarding each premium rate increase
2 on this policy form or similar policy forms over
3 the past ten years for this State or any other
4 state that, at a minimum, identifies:
- 5 (i) The policy forms for which premium rates
6 have been increased;
- 7 (ii) The calendar years when the form was
8 available for purchase; and
- 9 (iii) The amount or per cent of each increase.
- 10 The percentage may be expressed as a
11 percentage of the premium rate prior to the
12 increase, and may also be expressed as
13 minimum and maximum percentages if the rate
14 increase is variable by rating
15 characteristics;
- 16 (B) The insurer, in a fair manner, may provide
17 additional explanatory information related to the
18 rate increases;
- 19 (C) An insurer shall have the right to exclude from
20 the disclosure premium rate increases that only
21 apply to blocks of business acquired from other



1 nonaffiliated insurers or the long-term care
2 policies acquired from other nonaffiliated
3 insurers when those increases occurred prior to
4 the acquisition;

5 (D) If an acquiring insurer files for a rate increase
6 on a long-term care policy form acquired from
7 nonaffiliated insurers or a block of policy forms
8 acquired from nonaffiliated insurers on or before
9 the later of the effective date of this section
10 or the end of a twenty-four-month period
11 following the acquisition of the block or
12 policies, the acquiring insurer may exclude that
13 rate increase from the disclosure. However, the
14 nonaffiliated selling company shall include the
15 disclosure of that rate increase in accordance
16 with subparagraph (A); and

17 (E) If the acquiring insurer in subparagraph (D)
18 files for a subsequent rate increase, even within
19 the twenty-four-month period, on the same policy
20 form acquired from nonaffiliated insurers or
21 block of policy forms acquired from nonaffiliated



1 insurers referenced in subparagraph (D), the
2 acquiring insurer shall make all disclosures
3 required by paragraph (5), including disclosure
4 of the earlier rate increase referenced in
5 subparagraph (D).

6 (c) An applicant shall sign an acknowledgement at the time
7 of application, unless the method of application does not allow
8 for signature at that time, that the insurer made the disclosure
9 required under subsection (b)(1) and (5). If due to the method
10 of application the applicant cannot sign an acknowledgement at
11 the time of application, the applicant shall sign no later than
12 at the time of delivery of the policy or certificate.

13 (d) An insurer shall use the forms in Appendices B and F
14 of the October 2000 NAIC Long-Term Care Insurance Model
15 Regulation to comply with subsections (b) and (c).

16 (e) An insurer shall provide notice of an upcoming premium
17 rate schedule increase to all policyholders or certificate
18 holders, if applicable, at least forty-five days prior to the
19 implementation of the premium rate schedule increase by the
20 insurer. The notice shall include the information required by
21 subsection (b) when the rate increase is implemented.



1 §431:10H-E Initial filing requirements. (a) This section
2 applies to any long-term care policy issued in this State after
3 December 31, 2006.

4 (b) An insurer shall provide the information listed in
5 this subsection to the commissioner thirty days prior to making
6 a long-term care insurance form available for sale as follows:

7 (1) A copy of the disclosure documents required in section
8 431:10H-221; and

9 (2) An actuarial certification consisting of at least the
10 following:

11 (A) A statement that the initial premium rate
12 schedule is sufficient to cover anticipated costs
13 under moderately adverse experience and that the
14 premium rate schedule is reasonably expected to
15 be sustainable over the life of the form with no
16 future premium increases anticipated;

17 (B) A statement that the policy design and coverage
18 provided have been reviewed and taken into
19 consideration;

- 1 (C) A statement that the underwriting and claims
2 adjudication processes have been reviewed and
3 taken into consideration;
- 4 (D) A complete description of the basis for contract
5 reserves that are anticipated to be held under
6 the form, that shall include:
 - 7 (i) Sufficient detail or sample calculations
8 provided so as to have a complete depiction
9 of the reserve amounts to be held;
 - 10 (ii) A statement that the assumptions used for
11 reserves contain reasonable margins for
12 adverse experience;
 - 13 (iii) A statement that the net valuation premium
14 for renewal years does not increase (except
15 for attained-age rating where permitted);
16 and
 - 17 (iv) A statement that the difference between the
18 gross premium and the net valuation premium
19 for renewal years is sufficient to cover
20 expected renewal expenses; or if such a
21 statement cannot be made, a complete

1 description of the situations where this
2 does not occur;
3 provided that an aggregate distribution of
4 anticipated issues may be used as long as the
5 underlying gross premiums maintain a reasonably
6 consistent relationship. If the gross premiums
7 for certain age groups appear to be inconsistent
8 with this requirement, the commissioner may
9 request a demonstration under subsection (c)
10 based on a standard age distribution; and

11 (E) A:

- 12 (i) Statement that the premium rate schedule is
13 not less than the premium rate schedule for
14 existing similar policy forms also available
15 from the insurer except for reasonable
16 differences attributable to benefits; or
17 (ii) Comparison of the premium schedules for
18 similar policy forms that are currently
19 available from the insurer with an
20 explanation of the differences.



1 (c) The commissioner may request an actuarial
2 demonstration that benefits are reasonable in relation to
3 premiums. The actuarial demonstration shall include either
4 premium and claim experience on similar policy forms, adjusted
5 for any premium or benefit differences, relevant and credible
6 data from other studies, or both.

7 In the event the commissioner requires additional
8 information under this section, the period of time in subsection
9 (b) does not include the period during which the insurer is
10 preparing the requested information.

11 **§431:10H-F Licensing.** A producer is not authorized to
12 sell, solicit, or negotiate with respect to long-term care
13 insurance except as authorized by article 9A.

14 **§431:10H-G Premium rate schedule increases.** (a) This
15 section shall apply as follows:

16 (1) Except as provided in paragraph (2), this section
17 applies to any long-term care policy or certificate
18 issued in this State after December 31, 2006; and

19 (2) For certificates issued on or after the effective date
20 of this section under a group long-term care insurance
21 policy as defined in paragraph (1) of the definition



1 of "group long-term care insurance" in section
2 431:10H-104, which policy was in force at the time
3 this section became effective, this section shall
4 apply on the policy anniversary following July 1,
5 2007.

6 (b) An insurer shall provide notice of a pending premium
7 rate schedule increase, including an exceptional increase, to
8 the commissioner at least thirty days prior to the notice to the
9 policyholders and shall include:

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

11 (2) Certification by a qualified actuary that:

12 (A) If the requested premium rate schedule increase
13 is implemented and the underlying assumptions,
14 which reflect moderately adverse conditions, are
15 realized, no further premium rate schedule
16 increases are anticipated; and

17 (B) The premium rate filing is in compliance with
18 this section;

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



1 (A) Lifetime projections of earned premiums and
2 incurred claims based on the filed premium rate
3 schedule increase; and the method and assumptions
4 used in determining the projected values,
5 including reflection of any assumptions that
6 deviate from those used for pricing other forms
7 currently available for sale;

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

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

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

17 (iv) For exceptional increases, the projected
18 experience should be limited to the
19 increases in claims expenses attributable to
20 the approved reasons for the exceptional
21 increase. In the event the commissioner



1 determines, as provided in paragraph (4) of
2 the definition of "exceptional increase" in
3 section 431:10H-201 that offsets may exist,
4 the insurer shall use appropriate net
5 projected experience;

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

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

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

17 (E) In the event that it is necessary to maintain
18 consistent premium rates for new certificates and
19 certificates receiving a rate increase, the
20 insurer shall file composite rates reflecting
21 projections of new certificates;

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

6 (5) Sufficient information for review and approval of the
7 premium rate schedule increase by the commissioner.

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

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

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

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



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

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

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

9 (3) In the event that a policy form has both exceptional
10 and other increases, the values in paragraph (2) (B)
11 and (D) shall also include seventy per cent for
12 exceptional rate increase amounts; and

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

19 (d) For each rate increase that is implemented, the
20 insurer shall file for review by the commissioner updated
21 projections, as defined in subsection (b) (3) (A), annually for

1 the next three years and include a comparison of actual results
2 to projected values. The commissioner may extend the period to
3 greater than three years if actual results are not consistent
4 with projected values from prior projections. For group
5 insurance policies that meet the conditions in subsection (k),
6 the projections required by this subsection shall be provided to
7 the policyholder in lieu of filing with the commissioner.

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

17 (f) If the commissioner has determined that the actual
18 experience following a rate increase does not adequately match
19 the projected experience and that the current projections under
20 moderately adverse conditions demonstrate that incurred claims
21 will not exceed proportions of premiums specified in subsection



1 (c), the commissioner may require the insurer to implement any
2 of the following:

- 3 (1) Premium rate schedule adjustments; or
4 (2) Other measures to reduce the difference between the
5 projected and actual experience.

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

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

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



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

7 (h) (1) For a rate increase filing that meets the
8 following criteria, the commissioner shall review, for
9 all policies included in the filing, the projected
10 lapse rates and past lapse rates during the twelve
11 months following each increase to determine if
12 significant adverse lapsing has occurred or is
13 anticipated.

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

16 (B) The rate increase is not an exceptional increase;
17 and

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

1 (2) In the event significant adverse lapsing has occurred,
2 is anticipated in the filing, or is evidenced in the
3 actual results as presented in the updated projections
4 provided by the insurer following the requested rate
5 increase, the commissioner may determine that a rate
6 spiral exists. Following the determination that a
7 rate spiral exists, the commissioner may require the
8 insurer to offer, without underwriting, to all in
9 force insureds subject to the rate increase the option
10 to replace existing coverage with one or more
11 reasonably comparable products being offered by the
12 insurer or its affiliates.

13 (A) The offer shall:

14 (i) Be subject to the approval of the
15 commissioner;

16 (ii) Be based on actuarially sound principles,
17 but not be based on attained age; and

18 (iii) Provide that maximum benefits under any new
19 policy accepted by an insured shall be
20 reduced by comparable benefits already paid
21 under the existing policy;



1 (B) The insurer shall maintain the experience of all
2 the replacement insureds separate from the
3 experience of insureds originally issued the
4 policy forms. In the event of a request for a
5 rate increase on the policy form, the rate
6 increase shall be limited to the lesser of:

7 (i) The maximum rate increase determined based
8 on the combined experience; and

9 (ii) The maximum rate increase determined based
10 only on the experience of the insureds
11 originally issued the form plus ten per
12 cent.

13 (i) If the commissioner determines that the insurer has
14 exhibited a persistent practice of filing inadequate initial
15 premium rates for long-term care insurance, the commissioner, in
16 addition to the provisions of subsection (h), may prohibit the
17 insurer from either of the following:

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

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

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

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

13 (2) The portion of the policy that provides insurance
14 benefits other than long-term care coverage meets the
15 nonforfeiture requirements as applicable in any of the
16 following:

17 (A) Section 431:10D-104; and

18 (B) Section 431:10H-107;

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

- 1 (4) The portion of the policy that provides insurance
2 benefits other than long-term care coverage meets the
3 requirements as applicable in the following:
- 4 (A) Policy illustrations as required by part IV of
5 article 10D; and
- 6 (B) Disclosure requirements, as applicable, in
7 article 10D; and
- 8 (5) An actuarial memorandum is filed with the insurance
9 division that includes:
- 10 (A) A description of the basis on which the long-term
11 care rates were determined;
- 12 (B) A description of the basis for the reserves;
- 13 (C) A summary of the type of policy, benefits,
14 renewability, general marketing method, and
15 limits on ages of issuance;
- 16 (D) A description and a table of each actuarial
17 assumption used. For expenses, an insurer shall
18 include per cent of premium dollars per policy
19 and dollars per unit of benefits, if any;



- 1 (E) A description and a table of the anticipated
2 policy reserves and additional reserves to be
3 held in each future year for active lives;
- 4 (F) The estimated average annual premium per policy
5 and the average issue age;
- 6 (G) A statement as to whether underwriting is
7 performed at the time of application. The
8 statement shall indicate whether underwriting is
9 used and, if used, the statement shall include a
10 description of the type or types of underwriting
11 used, such as medical underwriting or functional
12 assessment underwriting. Concerning a group
13 policy, the statement shall indicate whether the
14 enrollee or any dependent will be underwritten
15 and when underwriting occurs; and
- 16 (H) A description of the effect of the long-term care
17 policy provision on the required premiums,
18 nonforfeiture values and reserves on the
19 underlying insurance policy, both for active
20 lives and those in long-term care claim status.

1 (k) Subsections (f) and (h) shall not apply to group
2 insurance policies as defined in paragraph (1) of the definition
3 of "group long-term care insurance" in section 431:10H-104

4 where:

5 (1) The policies insure two hundred fifty or more persons
6 and the policyholder has five thousand or more
7 eligible employees of a single employer; or

8 (2) The policyholder, and not the certificate holders,
9 pays a material portion of the premium, which shall
10 not be less than twenty per cent of the total premium
11 for the group in the calendar year prior to the year a
12 rate increase is filed.

13 **§431:10H-H Additional standards for benefit triggers for**
14 **qualified long-term care insurance contracts.** (a) For purposes
15 of this section the following definitions shall apply:

16 "Chronically ill individual" is as defined in section
17 7702B(c) (2) of the Internal Revenue Code of 1986, as amended.

18 Under this provision, a chronically ill individual means any
19 individual who has been certified by a licensed health care
20 practitioner as:

- 1 (1) Being unable to perform (without substantial
2 assistance from another individual) at least two
3 activities of daily living for a period of at least
4 ninety days due to a loss of functional capacity; or
5 (2) Requiring substantial supervision to protect the
6 individual from threats to health and safety due to
7 severe cognitive impairment.

8 "Chronically ill individual" shall not include an
9 individual otherwise meeting these requirements unless within
10 the preceding twelve-month period a licensed health care
11 practitioner has certified that the individual meets these
12 requirements.

13 "Licensed health care practitioner" means a physician, as
14 defined in section 1861(r)(1) of the Social Security Act, a
15 registered professional nurse, licensed social worker, or other
16 individual who meets requirements prescribed by the Secretary of
17 the Treasury.

18 "Maintenance or personal care services" means any care the
19 primary purpose of which is the provision of needed assistance
20 with any of the disabilities as a result of which the individual
21 is a chronically ill individual (including the protection from

1 threats to health and safety due to severe cognitive
2 impairment).

3 "Qualified long-term care services" means services that
4 meet the requirements of section 7702(c)(1) of the Internal
5 Revenue Code of 1986, as amended, as follows: necessary
6 diagnostic, preventive, therapeutic, curative, treatment,
7 mitigation, and rehabilitative services, and maintenance or
8 personal care services that are required by a chronically ill
9 individual, and are provided pursuant to a plan of care
10 prescribed by a licensed health care practitioner.

11 (b) A qualified long-term care insurance contract shall
12 pay only for qualified long-term care services received by a
13 chronically ill individual provided pursuant to a plan of care
14 prescribed by a licensed health care practitioner.

15 (c) A qualified long-term care insurance contract shall
16 condition the payment of benefits on a determination of the
17 insured's inability to perform activities of daily living for an
18 expected period of at least ninety days due to a loss of
19 functional capacity or to severe cognitive impairment.

20 (d) Certifications regarding activities of daily living
21 and cognitive impairment required pursuant to subsection (c)



1 shall be performed by the following licensed or certified
2 professionals: physicians, registered professional nurses,
3 licensed social workers, or other individuals who meet
4 requirements prescribed by the Secretary of the Treasury.

5 (e) Certifications required pursuant to subsection (c) may
6 be performed by a licensed health care professional at the
7 direction of the carrier as is reasonably necessary with respect
8 to a specific claim, except that when a licensed health care
9 practitioner has certified that an insured is unable to perform
10 activities of daily living for an expected period of at least
11 ninety days due to a loss of functional capacity and the insured
12 is in claim status, the certification may not be rescinded and
13 additional certifications may not be performed until after the
14 expiration of the ninety-day period.

15 (f) Qualified long-term care insurance contracts shall
16 include a clear description of the process for appealing and
17 resolving disputes with respect to benefit determinations.

18 **§431:10H-I Penalties.** In addition to any other penalties
19 provided by the laws of this State, any insurer and any producer
20 found to have violated any requirement of this State relating to
21 the regulation of long-term care insurance or the marketing of

1 such insurance shall be subject to a fine of up to three times
2 the amount of any commissions paid for each policy involved in
3 the violation or up to \$10,000, whichever is greater."

4 SECTION 3. Section 431:10H-104, Hawaii Revised Statutes,
5 is amended by adding four new definitions to read as follows:

6 "Commissioner" means the insurance commissioner of this
7 State.

8 "Exceptional increase" means only those increases filed by
9 an insurer as exceptional for which the commissioner determines
10 the need for the premium rate increase is justified:

11 (1) Due to:

12 (A) Changes in laws or rules applicable to long-term
13 care coverage in this State; or

14 (B) Increased and unexpected utilization that affects
15 the majority of insurers of similar products;

16 (2) Except as provided in section 431:10H-232, exceptional
17 increases shall be subject to the same requirements as
18 other premium rate schedule increases;

19 (3) The commissioner may request a review by an
20 independent actuary or a professional actuarial body



1 of the basis for a request that an increase be
2 considered an exceptional increase; and

3 (4) The commissioner, in determining that the necessary
4 basis for an exceptional increase exists, shall also
5 determine any potential offsets to higher claims
6 costs.

7 "Incidental," as used in section 431:10H-232(j), means that
8 the value of the long-term care benefits provided is less than
9 ten per cent of the total value of the benefits provided over
10 the life of the policy. These values shall be measured as of
11 the date of issue.

12 "Qualified long-term care insurance contract" or "federally
13 tax-qualified long-term care insurance contract" means an
14 individual or group insurance contract that meets the
15 requirements of Section 7702B(b) of the Internal Revenue Code of
16 1986, as amended, as follows:

17 (1) The only insurance protection provided under the
18 contract is coverage of qualified long-term care
19 services. A contract shall not fail to satisfy this
20 subparagraph by reason of payments being made on a per
21 diem or other periodic basis without regard to the



1 expenses incurred during the period to which the
2 payments relate;

3 (2) The contract does not pay or reimburse expenses
4 incurred for services or items to the extent that the
5 expenses are reimbursable under Title XVIII of the
6 Social Security Act, as amended, or would be so
7 reimbursable but for the application of a deductible
8 or coinsurance amount. The requirements of this
9 subparagraph shall not apply to expenses that are
10 reimbursable under Title XVIII of the Social Security
11 Act only as a secondary payor. A contract shall not
12 fail to satisfy this subparagraph by reason of
13 payments being made on a per diem or other periodic
14 basis without regard to the expenses incurred during
15 the period to which the payments relate;

16 (3) The contract is guaranteed renewable, within the
17 meaning of section 7702B(b)(1)(C) of the Internal
18 Revenue Code of 1986, as amended;

19 (4) The contract does not provide for a cash surrender
20 value or other money that can be paid, assigned,



1 pledged as collateral for a loan, or borrowed except
2 as provided in paragraph (5);

3 (5) All refunds of premiums, and all policyholder
4 dividends or similar amounts under the contract are to
5 be applied as a reduction in future premiums or to
6 increase future benefits, except that a refund on the
7 event of death of the insured or a complete surrender
8 or cancellation of the contract cannot exceed the
9 aggregate premiums paid under the contract; and

10 (6) The contract meets the consumer protection provisions
11 set forth in Section 7702B(g) of the Internal Revenue
12 Code of 1986, as amended.

13 "Qualified long-term care insurance contract" or "federally
14 tax-qualified long term care insurance contract" also means the
15 portion of a life insurance contract that provides long-term
16 care insurance coverage by rider or as part of the contract and
17 that satisfies the requirements of Sections 7702B(b) and (e) of
18 the Internal Revenue Code of 1986, as amended."

19 SECTION 4. Section 431:10H-104, Hawaii Revised Statutes,
20 is amended by amending the definition of "long-term care
21 insurance" to read as follows:

1 "Long-term care insurance" means any insurance policy or
2 rider advertised, marketed, offered, or designed to provide
3 coverage for not less than twelve consecutive months for each
4 covered person on an expense incurred, indemnity, prepaid, or
5 other basis, for one or more necessary or medically necessary
6 diagnostic, preventive, therapeutic, rehabilitative,
7 maintenance, or personal care services, provided in a setting
8 other than an acute care unit of a hospital. The term includes
9 group and individual annuities and life insurance policies or
10 riders that provide directly or that supplement long-term care
11 insurance. The term also includes a policy or rider that
12 provides for payment of benefits based upon cognitive impairment
13 or loss of functional capacity. The term shall also include
14 qualified long-term care insurance contracts. Long-term care
15 insurance may be issued by insurers; fraternal benefit
16 societies; nonprofit health, hospital, and medical service
17 corporations; prepaid health plans; health maintenance
18 organizations or any similar organization to the extent they are
19 otherwise authorized to issue life or health insurance.

20 Long-term care insurance shall not include any insurance
21 policy [~~which~~] that is offered primarily to provide basic



1 medicare supplement coverage, basic hospital expense coverage,
2 basic medical-surgical expense coverage, hospital confinement
3 indemnity coverage, major medical expense coverage, disability
4 income or related asset-protection coverage, accident only
5 coverage, specified disease or specified accident coverage, or
6 limited benefit health coverage.

7 With regard to life insurance, this term does not include
8 life insurance policies [~~which~~] that accelerate the death
9 benefit specifically for one or more of the qualifying events of
10 terminal illness, medical conditions requiring extraordinary
11 medical intervention, or permanent institutional confinement,
12 and [~~which~~] that provide the option of a lump-sum payment for
13 those benefits and where neither the benefits nor the
14 eligibility for the benefits is conditioned upon the receipt of
15 long-term care.

16 Notwithstanding any other provision [~~contained herein,~~] of
17 this article, any product advertised, marketed, or offered as
18 long-term care insurance shall be subject to [~~the provisions of~~]
19 this article."

20 SECTION 5. Section 431:10H-111, Hawaii Revised Statutes,
21 is amended to read as follows:



1 " ~~[f]~~§431:10H-111~~[+]~~ **Right to return; free look provision.**
2 Long-term care insurance applicants shall have the right to
3 return the policy or certificate within thirty days of its
4 delivery and to have the premium refunded if, after examination
5 of the policy or certificate, the applicant is not satisfied for
6 any reason. Long-term care insurance policies and certificates
7 shall have a notice prominently printed on the first page or
8 attached thereto stating in substance that the applicant shall
9 have the right to return the policy or certificate within thirty
10 days of its delivery and to have the premium refunded if, after
11 examination of the policy or certificate, other than a
12 certificate issued pursuant to a policy issued to a group
13 defined in paragraph (1) of the definition of "group long-term
14 care insurance" in section 431:10H-104, the applicant is not
15 satisfied for any reason. This section shall also apply to
16 denials of applications and any refund shall be made within
17 thirty days of the return or denial."

18 SECTION 6. Section 431:10H-112, Hawaii Revised Statutes,
19 is amended to read as follows:

20 "**§431:10H-112 Outline of coverage required.** (a) An
21 outline of coverage shall be delivered to a prospective



1 applicant for long-term care insurance at the time of initial
2 solicitation through means that prominently direct the attention
3 of the recipient to the document and its purpose. The
4 commissioner shall prescribe a standard format, including style,
5 arrangement, and overall appearance, and the content of an
6 outline of coverage. In the case of producer solicitations, a
7 producer shall deliver the outline of coverage prior to the
8 presentation of an application or enrollment form. In the case
9 of direct response solicitation, the outline of coverage shall
10 be presented in conjunction with any application or enrollment
11 form. In the case of a policy issued to a group defined in
12 paragraph (1) of the definition of "group long-term care
13 insurance" in section 431:10H-104, an outline of coverage shall
14 not be required to be delivered; provided that the information
15 described in subsection (b) is contained in other materials
16 relating to enrollment. Upon request, these other materials
17 shall be made available to the commissioner.

18 (b) The outline of coverage shall include:

19 (1) A description of the principal benefits and coverage
20 provided in the policy;



- 1 (2) A statement of the principal exclusions, reductions,
2 and limitations contained in the policy;
- 3 (3) A statement of the terms under which the policy or
4 certificate, or both, may be continued in force or
5 discontinued, including any reservation in the policy
6 of a right to change premium. Continuation or
7 conversion provisions of group coverage shall be
8 specifically described;
- 9 (4) A statement that the outline of coverage is a summary
10 only, not a contract of insurance, and that the policy
11 or group master policy contains governing contractual
12 provisions;
- 13 (5) A description of the terms under which the policy or
14 certificate may be returned and premium refunded;
15 [and]
- 16 (6) A brief description of the relationship of cost of
17 care and benefits[-]; and
- 18 (7) A statement that discloses to the policyholder or
19 certificate holder whether the policy is intended to
20 be a federally tax-qualified long-term care insurance

1 contract under section 7702B(b) of the Internal
2 Revenue Code of 1986, as amended."

3 SECTION 7. Section 431:10H-114, Hawaii Revised Statutes,
4 is amended by amending subsection (a) to read as follows:

5 "(a) At the time of policy delivery, a policy summary
6 shall be delivered for an individual life insurance policy that
7 provides long-term care benefits within the policy or by rider.
8 In the case of direct response solicitations, the insurer shall
9 deliver the policy summary upon the applicant's request, but
10 regardless of request shall make delivery no later than at the
11 time of policy delivery. In addition to complying with all
12 applicable requirements, the policy summary shall also include:

- 13 (1) An explanation of how the long-term care benefit
14 interacts with other components of the policy,
15 including deductions from death benefits;
- 16 (2) An illustration of the amount of benefits, the length
17 of benefit, and the guaranteed lifetime benefits if
18 any, for each covered person;
- 19 (3) Any exclusions, reductions, and limitations on
20 benefits of long-term care;

1 (4) A statement that any long-term care inflation
2 protection option required by section 431:10H-220 is
3 not available under this policy;

4 (5) If applicable to the policy type, the summary shall
5 also include a disclosure of the effects of exercising
6 other rights under the policy, a disclosure of
7 guarantees related to long-term care costs of
8 insurance charges, and current and projected maximum
9 lifetime benefits; and

10 (6) The provisions of the policy summary listed above may
11 be incorporated into a basic illustration required to
12 be delivered or into the life insurance policy summary
13 [~~which~~] that is required to be delivered."

14 SECTION 8. Section 431:10H-202, Hawaii Revised Statutes,
15 is amended to read as follows:

16 "[~~§~~§431:10H-202~~]~~] **Renewability.** (a) The terms
17 "guaranteed renewable" and "noncancellable" shall not be used in
18 any individual long-term care insurance policy without further
19 explanatory language in accordance with the disclosure
20 requirements of section 431:10H-221. A policy issued to an

1 individual shall not contain renewal provisions other than
2 "guaranteed renewable" or "noncancellable."

3 (b) The term "guaranteed renewable" may be used only when
4 the insured has the right to continue the long-term care
5 insurance in force by the timely payment of premiums and when
6 the insurer has no unilateral right to make any change in any
7 provision of the policy or rider while the insurance is in
8 force, and cannot decline to renew, except that rates may be
9 revised by the insurer on a class basis.

10 (c) The term "noncancellable" [~~means~~] may be used only
11 when the insured has the right to continue the long-term care
12 insurance in force by the timely payment of premiums during
13 which period the insurer has no right to unilaterally make any
14 change in any provision of the insurance or in the premium rate.

15 (d) The term "level premium" may only be used when the
16 insurer does not have the right to change the premium.

17 (e) In addition to the other requirements of this section,
18 a qualified long-term care insurance contract shall be
19 guaranteed renewable, within the meaning of section
20 7702B(b) (1) (C) of the Internal Revenue Code of 1986, as
21 amended."



1 SECTION 9. Section 431:10H-203, Hawaii Revised Statutes,
2 is amended by amending subsection (a) to read as follows:

3 "(a) A policy may not be delivered or issued for delivery
4 in this State as long-term care insurance if the policy limits
5 or excludes coverage by type of illness, treatment, medical
6 condition, or accident, except as follows:

7 (1) Preexisting conditions or diseases;

8 (2) Mental or nervous disorders; however, this shall not
9 permit exclusion or limitation of benefits on the
10 basis of Alzheimer's disease;

11 (3) Alcoholism and drug addiction;

12 (4) Illness, treatment, or medical condition arising out
13 of:

14 (A) War or act of war whether declared or undeclared;

15 (B) Participation in a felony, riot or insurrection;

16 (C) Service in the armed forces or units auxiliary
17 thereto;

18 (D) Suicide (sane or insane), attempted suicide or
19 intentionally self-inflicted injury; or

20 (E) Aviation (this exclusion applies only to non-
21 fare-paying passengers); [~~or~~]



1 (5) Treatment provided in a government facility (unless
 2 otherwise required by law), services for which
 3 benefits are available under medicare or other
 4 governmental program (except Medicaid), any state or
 5 federal workers' compensation, employer's liability or
 6 occupational disease law, or any motor vehicle
 7 [~~insurance~~] no-fault law, services provided by a
 8 member of the covered person's immediate family and
 9 services for which no charge is normally made in the
 10 absence of insurance[~~er~~];

11 (6) Expenses for services or items available or paid under
 12 another long-term care insurance or health insurance
 13 policy; or

14 (7) In the case of a qualified long-term care insurance
 15 contract, expenses for services or items to the extent
 16 that the expenses are reimbursable under Title XVIII
 17 of the Social Security Act or would be so reimbursable
 18 but for the application of a deductible or coinsurance
 19 amount."

20 SECTION 10. Section 431:10H-211, Hawaii Revised Statutes,
 21 is amended to read as follows:

1 " ~~[†]~~§431:10H-211~~[†]~~ **Disclosure; renewability.** (a)
2 Individual long-term care insurance policies shall contain a
3 renewability provision. The provision shall be appropriately
4 captioned, shall appear on the first page of the policy, and
5 shall clearly state the duration, where limited, of renewability
6 and the duration of the term of coverage for which the policy is
7 issued and for which it may be renewed. This provision shall
8 not apply to policies that do not contain a renewability
9 provision, and under which the right to nonrenew is reserved
10 solely to the policyholder.

11 (b) A long-term care insurance policy or certificate,
12 other than one where the insurer does not have the right to
13 change the premium, shall include a statement that premium rates
14 may change."

15 SECTION 11. Section 431:10H-216, Hawaii Revised Statutes,
16 is amended to read as follows:

17 " ~~[†]~~§431:10H-216~~[†]~~ **Disclosure of tax consequences.** With
18 regard to life insurance policies that provide for an
19 accelerated benefit for long-term care, a disclosure is required
20 at the time of application for the policy and at the time the
21 accelerated benefit payment request is submitted that receipt of

1 these accelerated benefits may be taxable, and that assistance
2 should be sought from a personal tax advisor. The disclosure
3 statement shall be prominently displayed on the first page of
4 the policy and any other related documents. This section shall
5 not apply to qualified long-term care insurance contracts."

6 SECTION 12. Section 431:10H-221, Hawaii Revised Statutes,
7 is amended by amending subsections (c) and (d) to read as
8 follows:

9 "(c) Upon determining that a sale will involve
10 replacement, an insurer, other than an insurer using direct
11 response solicitation methods, or its producer, shall furnish
12 the applicant, prior to issuance or delivery of the individual
13 long-term care insurance policy, a notice regarding replacement
14 of accident and health or sickness or long-term care coverage.
15 One copy of the notice shall be retained by the applicant and an
16 additional copy signed by the applicant shall be retained by the
17 insurer. The required notice shall be provided in the same
18 manner as shown in [~~Section 12(C) of the July 1998~~] Section 14C
19 of the October 2000 NAIC Long-Term Care Insurance Model
20 Regulation.



1 (d) Insurers using direct response solicitation methods
2 shall deliver a notice regarding replacement of accident and
3 health or sickness or long-term care coverage to the applicant
4 upon issuance of the policy. The required notice shall be
5 provided in the same manner as shown in [~~Section 12(D) of the~~
6 ~~July 1998~~] Section 14D of the October 2000 NAIC Long-Term Care
7 Insurance Model Regulation."

8 SECTION 13. Section 431:10H-222, Hawaii Revised Statutes,
9 is amended to read as follows:

10 **"§431:10H-222 Reporting requirements.** (a) Every insurer
11 shall maintain records for each producer of the producer's
12 amount of replacement sales as a per cent of the producer's
13 total annual sales and the amount of lapses of long-term care
14 insurance policies sold by the producer as a per cent of the
15 producer's total annual sales.

16 (b) Every insurer shall report annually by June 30 the ten
17 per cent of its producers with the greatest percentages of
18 lapses and replacements as measured in subsection (a).

19 (c) Reported replacement and lapse rates do not alone
20 constitute a violation of insurance laws or necessarily imply
21 wrongdoing. The reports are for the purpose of reviewing more



1 closely producer activities regarding the sale of long-term care
2 insurance.

3 (d) Every insurer shall report annually by June 30 the
4 number of lapsed policies as a per cent of its total annual
5 sales and as a per cent of its total number of policies in force
6 as of the end of the preceding calendar year.

7 (e) Every insurer shall report annually by June 30 the
8 number of replacement policies sold as a per cent of its total
9 annual sales and as a per cent of its total number of policies
10 in force as of the end of the preceding calendar year.

11 (f) ~~[For purposes of this section, "policy" means only~~
12 ~~long-term care insurance and "report" means on a statewide~~
13 ~~basis.]~~ Every insurer shall report annually by June 30, for
14 qualified long-term care insurance contracts, the number of
15 claims denied for each class of business, expressed as a
16 percentage of claims denied in accordance with Appendix E to the
17 October 2000 NAIC Long-Term Care Insurance Model Regulations.

18 (g) Reports required under this section shall be filed
19 with the commissioner.

20 (h) For purposes of this section:

1 "Claim" means, subject to the definition of "denied," a
2 request for payment of benefits under an in force policy
3 regardless of whether the benefit claimed is covered under the
4 policy or any terms or conditions of the policy have been met.

5 "Denied" means the insurer refuses to pay a claim for any
6 reason other than for claims not paid for failure to meet the
7 waiting period or because of an applicable preexisting
8 condition.

9 "Policy" means only long-term care insurance.

10 "Report" means on a statewide basis."

11 SECTION 14. Section 431:10H-226, Hawaii Revised Statutes,
12 is amended to read as follows:

13 "[+]§431:10H-226[+] **Loss ratio.** (a) This section shall
14 apply to all long-term care insurance policies or certificates
15 except those covered under sections 431:10H-222 and 431:10H-232.

16 Benefits under long-term care insurance policies shall be deemed
17 reasonable in relation to premiums; provided that the expected
18 loss ratio is at least sixty per cent, calculated in a manner
19 that provides for adequate reserving of the long-term care
20 insurance risk. In evaluating the expected loss ratio due
21 consideration shall be given to all relevant factors, including:

- 1 (1) Statistical credibility of incurred claims experience
- 2 and earned premiums;
- 3 (2) The period for which rates are computed to provide
- 4 coverage;
- 5 (3) Experienced and projected trends;
- 6 (4) Concentration of experience within early policy
- 7 duration;
- 8 (5) Expected claim fluctuation;
- 9 (6) Experience refunds, adjustments, or dividends;
- 10 (7) Renewability features;
- 11 (8) All appropriate expense factors;
- 12 (9) Interest;
- 13 (10) Experimental nature of the coverage;
- 14 (11) Policy reserves;
- 15 (12) Mix of business by risk classification, if applicable;
- 16 and
- 17 (13) Product features such as long elimination periods,
- 18 high deductibles, and high maximum limits.
- 19 (b) For purposes of this section, the commissioner shall
- 20 consult with a qualified long-term care actuary.



1 (c) Subsection (a) shall not apply to life insurance
2 policies that accelerate benefits for long-term care. A life
3 insurance policy that funds long-term care benefits entirely by
4 accelerating the death benefit is considered to provide
5 reasonable benefits in relation to premiums paid, if the policy
6 complies with all of the following provisions:

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

12 (2) The portion of the policy that provides life insurance
13 benefits meets the nonforfeiture requirements for life
14 insurance;

15 (3) The policy meets the disclosure requirements of
16 section 431:10H-114 as applicable;

17 (4) Any policy illustration that meets the applicable
18 requirements for policy illustration;

19 (5) An actuarial memorandum is filed with the insurance
20 division that includes:

- 1 (A) A description of the basis on which the long-term
- 2 care rates were determined;
- 3 (B) A description of the basis for the reserves;
- 4 (C) A summary of the type of policy, benefits,
- 5 renewability, general marketing method, and
- 6 limits on ages of issuance;
- 7 (D) A description and a table of each actuarial
- 8 assumption used. For expenses, an insurer shall
- 9 include per cent of premium dollars per policy
- 10 and dollars per unit of benefits, if any;
- 11 (E) A description and a table of the anticipated
- 12 policy reserves and additional reserves to be
- 13 held in each future year for active lives;
- 14 (F) The estimated average annual premium per policy
- 15 and the average issue age;
- 16 (G) A statement as to whether underwriting is
- 17 performed at the time of application. The
- 18 statement shall indicate whether underwriting is
- 19 used, and if used, the statement shall include a
- 20 description of the type or types of underwriting
- 21 used such as medical underwriting or functional



1 assessment underwriting. Concerning a group
 2 policy, the statement shall indicate whether the
 3 enrollee or any dependent will be underwritten
 4 and when underwriting occurs; and

5 (H) A description of the effect of the long-term care
 6 policy provision on the required premiums,
 7 nonforfeiture values and reserves on the
 8 underlying life insurance policy, both for active
 9 lives and those in long-term care claim status.

10 (d) This section shall apply to all long-term care
 11 insurance policies or certificates except those covered under
 12 sections 431:10H-E and 431:10H-G."

13 SECTION 15. Section 431:10H-229, Hawaii Revised Statutes,
 14 is amended to read as follows:

15 "**§431:10H-229 Standards for marketing.** (a) Every
 16 insurer, health care service plan, or other entity marketing
 17 long-term care insurance coverage in this State, directly or
 18 through producers, shall:

19 (1) Establish marketing procedures to assure that any
 20 comparison of policies by its producers will be fair
 21 and accurate;

- 1 (2) Establish marketing procedures to assure excessive
2 insurance is not sold or issued;
- 3 (3) Display prominently by type, stamp, or other
4 appropriate means, on the first page of the outline of
5 coverage and policy the following:
6 "Notice to buyer: This policy may not cover all of
7 the costs associated with long-term care incurred by
8 the buyer during the period of coverage. The buyer is
9 advised to review carefully all policy limitations.";
- 10 (4) Inquire and otherwise make every reasonable effort to
11 identify whether a prospective applicant or enrollee
12 for long-term care insurance currently has long-term
13 care insurance and the types and amounts of any such
14 insurance[+], except that in the case of qualified
15 long-term care insurance contracts, an inquiry into
16 whether a prospective applicant or enrollee for long-
17 term care insurance has accident and sickness
18 insurance is not required;
- 19 (5) Every insurer or entity marketing long-term care
20 insurance shall establish auditable procedures for
21 verifying compliance with subsection (a);

1 (6) If the state in which the policy or certificate is to
2 be delivered or issued for delivery has a senior
3 insurance counseling program approved by the
4 commissioner, the insurer, at solicitation, shall
5 provide written notice to the prospective policyholder
6 or certificate holder of a state senior insurance
7 counseling program including the name, address, and
8 telephone number of the program; ~~and~~

9 (7) For long-term care health insurance policies and
10 certificates, use the terms "noncancellable" or "level
11 premium" only when the policy or certificate conforms
12 to section 431:10H-202[-];

13 (8) Provide copies of the disclosure forms required in
14 section 431:10H-D(c) to the applicant; and

15 (9) Provide an explanation of the contingent benefit upon
16 lapse provided for in section 431:10H-233(f).

17 (b) In addition to the acts or practices prohibited in
18 article 13 [~~of this chapter~~], all of the following acts and
19 practices are prohibited:

20 (1) Twisting. Knowingly making any misleading
21 representation or incomplete or fraudulent comparison



1 of any insurance policies or insurers for the purpose
2 of inducing, or tending to induce, any person to
3 lapse, forfeit, surrender, terminate, retain, pledge,
4 assign, borrow on, or convert any insurance policy or
5 to take out a policy of insurance with another
6 insurer.

7 (2) High pressure tactics. Employing any method of
8 marketing having the effect of or tending to induce
9 the purchase of insurance through force, fright,
10 threat, whether explicit or implied, or undue pressure
11 to purchase or recommend purchase of insurance.

12 (3) Cold lead advertising. Making use directly or
13 indirectly of any method of marketing which fails to
14 disclose in a conspicuous manner that a purpose of the
15 method of marketing is solicitation of insurance and
16 that contact will be made by an insurance producer or
17 insurance company.

18 (4) Misrepresentation. Misrepresenting a material fact in
19 selling or offering to sell a long-term care insurance
20 policy."



1 SECTION 16. Section 431:10H-230, Hawaii Revised Statutes,
2 is amended by amending subsection (f) to read as follows:

3 "(f) The association shall also:

4 (1) At the time of the association's decision to endorse,
5 engage the services of a person with expertise in
6 long-term care insurance not affiliated with the
7 insurer to conduct an examination of the policies,
8 including benefits, features, and rates, and update
9 the examination thereafter in the event of material
10 change;

11 (2) Actively monitor the marketing efforts of the insurer
12 and its producers; and

13 (3) Review and approve all marketing materials or other
14 insurance communications used to promote sales or sent
15 to members regarding the policies or certificates.

16 This subsection shall not apply to qualified long-term care
17 insurance contracts."

18 SECTION 17. Section 431:10H-231, Hawaii Revised Statutes,
19 is amended by amending subsection (c) to read as follows:

1 "(c) To determine whether the applicant meets the
2 standards developed by the issuer, the producer and issuer shall
3 develop procedures that take the following into consideration:

4 (1) The ability to pay for the proposed coverage and other
5 pertinent financial information related to the
6 purchase of the coverage;

7 (2) The applicant's goals or needs with respect to long-
8 term care and the advantages and disadvantages of
9 insurance to meet these goals or needs; and

10 (3) The values, benefits, and costs of the applicant's
11 existing insurance, if any, when compared to the
12 values, benefits, and costs of the recommended
13 purchase or replacement.

14 The issuer, and where a producer is involved, the producer shall
15 make reasonable efforts to obtain the information set out above.

16 The efforts shall include presentation to the applicant, at or
17 prior to application, the "Long-Term Care Insurance Personal
18 Worksheet". The personal worksheet used by the issuer shall
19 contain, at a minimum, information in the format contained in
20 Appendix B of the [~~July 1998~~] October 2000 NAIC Long-Term Care
21 Insurance Model Regulation in not less than twelve-point type.

1 The issuer may request the applicant to provide additional
2 information to comply with its suitability standards. A copy of
3 the issuer's personal worksheet shall be filed with the
4 commissioner."

5 SECTION 18. Section 431:10H-231, Hawaii Revised Statutes,
6 is amended by amending subsection (e) to read as follows:

7 "(e) The sale or dissemination outside the company or
8 agency by the issuer or producer of information obtained through
9 the personal worksheet in Appendix B of the [~~July 1998~~] October
10 2000 NAIC Long-Term Care Insurance Model Regulation is
11 prohibited."

12 SECTION 19. Section 431:10H-231, Hawaii Revised Statutes,
13 is amended by amending subsections (g) and (h) to read as
14 follows:

15 "(g) At the same time as the personal worksheet is
16 provided to the applicant, the disclosure form entitled "Things
17 You Should Know Before You Buy Long-Term Care Insurance" shall
18 be provided. The form shall be in the format contained in
19 Appendix C to the [~~July 1998~~] October 2000 NAIC Long-Term Care
20 Insurance Model Regulation, in not less than twelve-point type.



1 (h) If the issuer determines that the applicant does not
2 meet its financial suitability standards, or if the applicant
3 has declined to provide the information, the issuer may reject
4 the application. In the alternative, the issuer shall send the
5 applicant a letter similar to the [~~July 1998~~] October 2000 NAIC
6 Long-Term Care Insurance Model Regulation, Appendix D. However,
7 if the applicant has declined to provide financial information,
8 the issuer may use some other method to verify the applicant's
9 intent. Either the applicant's returned letter or a record of
10 the alternate method of verification shall be made part of the
11 applicant's file."

12 SECTION 20. Section 431:10H-233, Hawaii Revised Statutes,
13 is amended to read as follows:

14 "[~~+~~]**\$431:10H-233**[~~+~~] **Nonforfeiture benefit requirement.**

15 (a) This section does not apply to life insurance policies
16 containing accelerated long-term care benefits.

17 (b) To comply with the requirement to offer a
18 nonforfeiture benefit pursuant to section 431:10H-116, the
19 following shall be met:

20 (1) A policy or certificate offered with nonforfeiture
21 benefits shall have coverage elements, eligibility,



1 benefit triggers, and benefit length that are the same
2 as coverage to be issued without nonforfeiture
3 benefits. The nonforfeiture benefit included in the
4 offer shall be the benefit described in subsection
5 (h); and

6 (2) The offer shall be in writing if the nonforfeiture
7 benefit is not otherwise described in the outline of
8 coverage or other materials given to the prospective
9 policyholder.

10 (c) If the offer required to be made under section
11 431:10H-116 is rejected, the insurer shall provide the
12 contingent benefit upon lapse described in this section.

13 (d) After rejection of the offer required under section
14 431:10H-116, for individual and group policies without
15 nonforfeiture benefits issued after June 30, 2000, the insurer
16 shall provide a contingent benefit upon lapse.

17 (e) If a group policyholder elects to make the
18 nonforfeiture benefit an option to the certificate holder, a
19 certificate shall provide either the nonforfeiture benefit or
20 the contingent benefit upon lapse.



1 (f) The contingent benefit on lapse shall be triggered
 2 every time an insurer increases the premium rates to a level
 3 which results in a cumulative increase of the annual premium
 4 equal to or exceeding the percentage of the insured's initial
 5 annual premium set forth in the table below based on the
 6 insured's issue age, and the policy or certificate lapses within
 7 one hundred twenty days of the due date of the premium so
 8 increased. Unless otherwise required, policyholders and
 9 certificate holders shall be notified at least thirty days prior
 10 to the due date of the premium reflecting the rate increase.

11 Triggers for a Substantial Premium Increase

	<u>Issue Age</u>	<u>Per Cent Increase Over Initial Premium</u>
14	29 and under	200%
15	30-34	190%
16	35-39	170%
17	40-44	150%
18	45-49	130%
19	50-54	110%
20	55-59	90%
21	60	70%



S.B. NO. 3052

1	61	66%
2	62	62%
3	63	58%
4	64	54%
5	65	50%
6	66	48%
7	67	46%
8	68	44%
9	69	42%
10	70	40%
11	71	38%
12	72	36%
13	73	34%
14	74	32%
15	75	30%
16	76	28%
17	77	26%
18	78	24%
19	79	22%
20	80	20%
21	81	19%



1	82	18%
2	83	17%
3	84	16%
4	85	15%
5	86	14%
6	87	13%
7	88	12%
8	89	11%
9	90 and over	10%

10 (g) On or before the effective date of a substantial
11 premium increase as defined in subsection (f), the insurer
12 shall:

13 (1) Offer to reduce policy benefits provided by the
14 current coverage without the requirement of additional
15 underwriting so that required premium payments are not
16 increased;

17 (2) Offer to convert the coverage to a paid-up status with
18 a shortened benefit period in accordance with the
19 terms of subsection (h). This option may be elected
20 at any time during the one-hundred-twenty-day period
21 referenced in subsection (f); and

1 (3) Notify the policyholder and certificate holder that a
2 default or lapse at any time during the one-hundred-
3 twenty-day period under subsection (f) shall be deemed
4 to be the election offer to convert in paragraph (2).

5 (h) Benefits continued as nonforfeiture benefits,
6 including contingent benefits upon lapse, are described in this
7 subsection, as follows:

8 (1) For purposes of this subsection, attained age rating
9 is defined as a schedule of premiums starting from the
10 issue date which increases age at least one per cent
11 per year prior to age fifty, and at least three per
12 cent per year beyond age fifty;

13 (2) For purposes of this subsection, the nonforfeiture
14 benefit shall be of a shortened benefit period
15 providing paid-up long-term care insurance coverage
16 after lapse. The same benefits (amounts and frequency
17 in effect at the time of lapse but not increased
18 thereafter) shall be payable for a qualifying claim,
19 but the lifetime maximum dollars or days of benefits
20 shall be determined as provided in paragraph (3);

1 (3) The standard nonforfeiture credit shall be equal to
2 one hundred per cent of the sum of all premiums paid,
3 including the premiums paid prior to any changes in
4 benefits. The insurer may offer additional shortened
5 benefit period options, as long as the benefits for
6 each duration equal or exceed the standard forfeiture
7 credit for that duration. However, the minimum
8 nonforfeiture credit shall not be less than thirty
9 times the daily nursing home benefit at the time of
10 lapse. In either event, the calculation of the
11 nonforfeiture credit is subject to the limitation of
12 subsection (i);

13 (4) The nonforfeiture benefit and contingent benefit upon
14 lapse shall begin not later than the end of the third
15 year following the policy or certificate issue date.
16 Notwithstanding the preceding sentence, except for a
17 policy or certificate with a contingent benefit upon
18 lapse or a policy or certificate with attained age
19 rating, the nonforfeiture benefit shall begin the
20 earlier of:

1 (A) The end of the tenth year following the policy or
2 certificate issue date; or

3 (B) The end of the second year following the date the
4 policy or certificate is no longer subject to
5 attained age rating; and

6 (5) Nonforfeiture credits may be used for all care and
7 services qualifying for benefits under the terms of
8 the policy or certificate, up to the limits specified
9 in the policy or certificate.

10 (i) All benefits paid by the insurer while the policy or
11 certificate is in premium paying status and in paid up status
12 shall not exceed the maximum benefits which would be payable if
13 the policy or certificate had remained in premium paying status.

14 (j) There shall be no difference in the minimum
15 nonforfeiture benefits as required under this section for group
16 and individual policies.

17 (k) The requirements set forth in this section shall
18 become effective July 1, 2000, and shall apply as follows:

19 (1) This section shall apply to any long-term care policy
20 issued in this State after June 30, 2000; and



1 (2) For certificates issued after June 30, 2000, under a
2 group long-term care insurance policy as defined in
3 paragraph (1) under the definition of "group long-term
4 care insurance" in section 431:10H-104, which policy
5 was in force on July 1, 2000, this section shall not
6 apply.

7 (1) Premiums charged for a policy or certificate
8 containing nonforfeiture benefits or contingent benefit on lapse
9 shall be subject to the loss ratio requirements of section
10 431:10H-226 treating the policy as a whole.

11 (m) To determine whether contingent nonforfeiture upon
12 lapse provisions are triggered under subsection (f), a replacing
13 insurer that purchases or assumes a block or blocks of long-term
14 care insurance policies from another insurer shall calculate the
15 percentage increase based on the initial annual premium paid by
16 the insured when the policy was first purchased from the
17 original insurer.

18 (n) A nonforfeiture benefit for qualified long-term care
19 insurance contracts that are level premium contracts shall be
20 offered that meets the following requirements:



- 1 (1) The nonforfeiture provision shall be appropriately
2 captioned;
- 3 (2) The nonforfeiture provision shall provide a benefit
4 available in the event of a default in the payment of
5 any premiums and shall state that the amount of the
6 benefit may be adjusted subsequent to being initially
7 granted only as necessary to reflect changes in
8 claims, persistency and interest as reflected in
9 changes in rates for premium paying contracts approved
10 by the commissioner for the same contract form; and
- 11 (3) The nonforfeiture provision shall provide at least one
12 of the following:
- 13 (A) Reduced paid-up insurance;
14 (B) Extended term insurance;
15 (C) Shortened benefit period; or
16 (D) Other similar offerings approved by the
17 commissioner."

18 SECTION 21. Section 431:10H-235, Hawaii Revised Statutes,
19 is amended to read as follows:

20 "[~~†~~]**§431:10H-235[†]** **Standard format outline of coverage;**
21 **group and individual policies.** This section implements,



1 interprets, and makes specific, the provisions of section
2 431:10H-112 in prescribing a standard format and the content of
3 an outline of coverage, as follows:

- 4 (1) The outline of coverage shall be a freestanding
5 document, using no smaller than ten-point type;
- 6 (2) The outline of coverage shall contain no material of
7 an advertising nature;
- 8 (3) Text that is capitalized or underscored in the
9 standard format outline of coverage may be emphasized
10 by other means that provide prominence equivalent to
11 the capitalization or underscoring;
- 12 (4) Use of the text and sequence of text of the standard
13 format outline of coverage is mandatory, unless
14 otherwise specifically indicated; and
- 15 (5) The format for outline of coverage shall be
16 substantially similar to the Outline of Coverage in
17 Section [25] 29 of the [~~July 1998~~] October 2000 NAIC
18 Long-Term Care Insurance Model Regulation."

19 SECTION 22. In codifying the new sections added by
20 sections 1 and 2 of this Act, the revisor of statutes shall

SB 3052

Report Title:

Long-Term Care Insurance

Description:

Makes amendments to long-term care insurance provisions.

