THE SENATE
TWENTY-FOURTH LEGISLATURE, 2007
STATE OF HAWAII

S.B. NO. 12 S.D. 2 H.D. 2

A BILL FOR AN ACT

RELATING TO HEALTH INSURANCE RATE REGULATION.

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

SECTION 1. The legislature finds that Act 74, Session Laws of Hawaii 2002 (Act 74), established a health insurance rate regulation law.

Act 74 was designed to stabilize health insurance rates, a significant fixed cost borne by Hawaii employers and employees, to help mitigate the economic effects of the terrorist attacks of September 11, 2001. Health insurance rate regulations under Act 74 ensured that health insurance rates were not excessive, inadequate, or unfairly discriminatory in a manner similar to the way that motor vehicle, workers' compensation, homeowners', and other property and casualty insurance lines are presently regulated. In addition, Act 74 ensured that rates would not be confiscatory or predatory.

The 2002 legislature found that rate regulation of other lines of insurance, such as motor vehicle, homeowners', and workers' compensation, had resulted in premium decreases from 1997 to 2002, while unregulated health insurance rates rose over

the same period. The 2002 legislature found, and this legislature agrees, that rate regulation ensures that rates are not excessive, thereby protecting employers and employees from unduly burdensome and unwarranted premium increases. Rate regulation also ensures that rates are adequate to promote the long-term viability of health care plans and are actuarially prudent, while preventing predatory pricing.

Unfortunately, Act 74 was repealed on June 30, 2006, pursuant to a sunset provision.

The purpose of this Act is to protect the public interest by re-establishing health insurance rate regulation.

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

"**ARTICLE**

HEALTH INSURANCE RATE REGULATION

§431: -101 Scope and purpose. (a) This article shall apply to all types of health insurance offered by managed care plans.

(b) The purpose of this article is to promote the public welfare by regulating health insurance rates to the end that

they shall not be excessive, inadequate, or unfairly discriminatory. Nothing in this article is intended to:

(1) Prohibit or discourage reasonable competition; or

(2) Prohibit or encourage, except to the extent necessary to accomplish the aforementioned purposes, uniformity in insurance rates, rating systems, rating plans, or practices.

This article shall be liberally interpreted to carry into effect this section.

§431: -102 Definitions. As used in this article:

"Commissioner" means the insurance commissioner.

"Enrollee" means a person who enters into a contractual relationship or who is provided with health care services or benefits through a managed care plan.

"Managed care plan" or "plan" means a health plan as used in article 431:10A, or chapter 432 or 432D, regardless of form, offered or administered by a health care insurer, including but not limited to a mutual benefit society or health maintenance organization, or voluntary employee beneficiary associations, but shall not include disability insurers licensed under chapter 431; provided that "managed care plan" shall not include any health plan established or funded by any federal, state, or

county government, including plans established under medicare (42 U.S.C. §§1395 et seq.), medicaid (42 U.S.C. §§1396 et seq.), federal employee health benefits Act (5 U.S.C. §§8901 et seq.), tricare (10 U.S.C. §1097), QUEST (Hawaii Administrative Rules title 17), Hawaii employer-union health benefits trust fund (chapter 87A), state health insurance program (chapter 431N), and similar government programs.

"Rate" means every rate, charge, classification, schedule, practice, or rule. The definition of "rate" excludes fees and fee schedules paid by the insurer to providers of services covered under this article.

"Supplementary rating information" includes any manual or plan of rates, classification, rating schedule, minimum premium, policy fee, rating rule, underwriting rule, statistical plan, and any other similar information needed to determine the applicable rates in effect or to be in effect.

"Supporting information" means:

(1) The experience and judgment of the filer and the experience or data of other organizations relied on by the filer;

(2) The interpretation of any other data relied upon by the filer; and

(3) Descriptions of methods used in making the rates and any other information required by the commissioner to be filed.

§431: -103 Making of rates. (a) Rates shall not be excessive, inadequate, or unfairly discriminatory and shall be reasonable in relation to the costs of the benefits provided.

(b) Except to the extent necessary to meet subsection (a), uniformity among managed care plans in any matters within the scope of this section shall be neither required nor prohibited.

§431: -104 Rate adjustment mandates. (a) Except as otherwise provided by law, the commissioner may mandate filings for health insurance under section 431: -105 when the commissioner has actuarially sound information that current rates may be excessive, inadequate, or unfairly discriminatory.

(b) Managed care plans shall submit the rate filings within one hundred twenty days of the commissioner's mandate.

(c) The rate filings shall be subject to the rate filing requirements under section 431: -105.

§431: -105 Rate filings. (a) Every managed care plan shall file in triplicate with the commissioner, every rate and every modification thereof that it proposes to use. Every filing shall state its proposed effective date and shall

indicate the character and extent of the coverage contemplated. The filing shall also include a report on investment income.

(b) Each filing shall be accompanied by a $50 fee payable to the commissioner and shall be deposited in the commissioner's education and training fund.

(c) At the same time as the filing of the rate, every managed care plan shall file all supplementary rating and supporting information to be used in support of or in conjunction with a rate. The managed care plan may satisfy its obligation to file supplementary rating and supporting information by reference to material that has been approved by the commissioner. The information furnished in support of a filing may include or consist of a reference to:

(1) Its interpretation of any statistical data upon which it relies;

(2) The experience of other managed care plans; or

(3) Any other relevant factors.

(d) 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 managed care plan to furnish additional information and, in that

event, 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 managed care plan. If the requested information is not provided within a reasonable time period, the filing may be returned to the managed care plan as not filed and not available for use. Rates shall be open to public inspection upon filing with the commissioner; provided that supporting and supplementary rating information filed with the commissioner shall be treated as confidential, proprietary information and shall not be subject to public inspection.

(e) After reviewing a managed care plan's filing, the commissioner may require that the managed care plan's rates be based upon the managed care plan's own loss and expense information.

(f) The commissioner shall review filings promptly after the filings have been made to determine whether the filings meet the requirements of this article. The commissioner shall calculate the investment income and accuracy of loss reserves upon which filings are based, and the managed care plan shall provide the information necessary to make the calculation.

(g) Except as provided herein, each filing shall be on file for a waiting period of ninety days before the filing becomes effective. The period may be extended by the commissioner for an additional period not to exceed fifteen days if the commissioner gives written notice within the waiting period to the managed care plan that made the filing, that the commissioner needs the additional time for the consideration of the filing. Upon written application by the managed care plan, 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: -108, 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.

(h) The commissioner, by written order, may suspend or modify the requirement of filing as to any class of health insurance, subdivision, or combination thereof, or as to classes of risks, the rates for which cannot practicably be filed before they are used. The order shall be made known to the affected

managed care plan. The commissioner may make examinations that the commissioner deems advisable to ascertain whether any rates affected by the order meet the standards set forth in section 431: -103.

(i) No managed care plan shall make or issue a contract or policy except in accordance with filings that are in effect for the managed care plan as provided in this article.

(j) The commissioner may make the rate effective upon filing for any class of health insurance, subdivision, or combination thereof that is subject to an individual risk premium modification that has been agreed to under a formal or informal bid process.

(k) For managed care plans having annual premium revenues of less than $10,000,000, the commissioner may adopt rules and procedures that will provide the commissioner with sufficient facts necessary to determine the reasonableness of the proposed rates without unduly burdening the managed care plan and its enrollees; provided that the rates meet the standards of section 431: -103.

(l) All managed care plans shall file initial rates within thirty days of the effective date of this article. These rates shall be in effect until disapproved by the commissioner. The

time limits set forth in this article for the commissioner's review of rates shall not apply to the commissioner's review of initial rates; provided that the commissioner shall review the initial rates within a reasonable period.

§431: -106 Reserves. (a) If a managed care plan's current net worth exceeds fifty per cent of its annual total expenses, as reported on the most recent annual financial statement filed with the commissioner, the excess moneys shall be reimbursed to the subscribers, the enrollees, or the customers in accordance with a plan submitted by the managed care plan to and approved by the commissioner; provided that this subsection shall not apply to managed care plans whose only source of revenue is government contracts. Persons eligible for the refund shall have been either subscribers, enrollees, or customers of the managed care plan on December 31 of the year preceding the year in which the refund is paid.

(b) Excess moneys applied in accordance with subsection (a) shall be reallocated among all lines of health insurance business sold by the managed care plan. Reallocation of moneys pursuant to this section may be delayed until the amount of moneys available to be reallocated exceeds $10,000,000. Nothing in this section shall prohibit a managed care plan from

maintaining reserves above minimum requirements but below the maximum limit, or from returning moneys to or reducing moneys payable by the subscribers, the enrollees, or the customers of the managed care plan prior to reaching the maximum limit.

(c) Nothing in this section shall be construed to alter or eliminate the minimum reserve requirements applicable to the managed care plan. In the event of a conflict, the minimum reserve requirements shall control.

(d) Eighty per cent of all investment income on the net reserves of investment manager fees shall be applied to the rate determination and filing of the managed care plan. This requirement may be waived or adjusted by the commissioner if the commissioner determines it would impair the minimum reserve requirements or solvency of the managed care plan.

§431: -107 Policy revisions that alter coverage. All plan revisions that alter coverage in any manner shall be filed with the commissioner. After review by the commissioner, the commissioner shall determine whether a rate filing for the plan revision must be submitted in accordance with section 431: -105. Plan revisions that affect the rate shall not be used unless the rate associated with those revisions is approved by the commissioner.

§431: -108 Disapproval of filings. (a) If, within the waiting period or any extension of the waiting period as provided in section 431: -105, the commissioner finds that a filing does not meet the requirements of this article, the commissioner shall send to the managed care plan that made the filing, written notice of disapproval of the filing specifying in what respects the filing fails to meet the requirements of this article, and stating that the filing shall not become effective.

(b) Whenever a managed care plan has no legally effective rates as a result of the commissioner's disapproval of rates, interim rates shall be established as follows:

(1) If a filing is disapproved, in whole or in part, a petition and demand for a contested case hearing may be filed in accordance with chapter 91. The managed care plan shall have the burden of proving that the disapproval is not justified. While the action of the commissioner in disapproving the rate filing is being challenged, the aggrieved managed care plan shall charge the rates established or the filed rates, whichever is lower;

(2) If a filing is approved, a contested case hearing in accordance with chapter 91 may be convened pursuant to subsection (c) to determine if the approved rates comply with the requirements of this article. If an appeal is taken from the commissioner's approval or if subsequent to the approval the commissioner convenes a hearing pursuant to subsection (c), the filing of the appeal or the commissioner's notice of hearing shall not stay the implementation of the rates approved by the commissioner, or the rates currently in effect, whichever is higher; or

(3) The commissioner may waive or modify the requirements of paragraph (1) or (2) if the application of those paragraphs will endanger the financial solvency of the managed care plan or the welfare of its enrollees. The commissioner may also order that a specified portion of the premiums be placed in an escrow account approved by the commissioner. When new rates become legally effective, the commissioner may order the escrowed funds or any change in interim rates to be refunded or allow the managed care plan to exact a surcharge on premiums, whichever applies.

(c) If at any time subsequent to the applicable review period provided for in section 431: -105, the commissioner finds that a filing does not comply with the requirements of this article, the commissioner shall order a hearing upon the filing. The hearing shall be held upon not less than ten days' written notice to every managed care plan that made such a filing. The notice shall specify the matters to be considered at the hearing. If, after a hearing the commissioner finds that a filing does not meet the requirements of this article, the commissioner shall issue an order specifying in what respects the filing fails to meet the requirements, and stating when, within a reasonable period thereafter, the filing shall be deemed no longer effective. Copies of the order shall be sent to each managed care plan whose rates are affected by the order. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

(d) (1) Any enrollee of a managed care plan or organization that purchases health insurance from a managed care plan aggrieved with respect to any filing that is in effect may make a written demand to the commissioner for a hearing thereon; provided that the

managed care plan that made the filing shall not be authorized to proceed under this subsection;

(2) The demand shall specify the grounds to be relied upon by the aggrieved enrollee or organization and the demand shall show that the enrollee or organization has a specific economic interest affected by the filing;

(3) If the commissioner finds that:

(A) The demand is made in good faith;

(B) The applicant would be so aggrieved if the enrollee's or organization's grounds are established; and

(C) The grounds otherwise justify a hearing;

The commissioner, within thirty days after receipt of the demand, shall hold a hearing. The hearing shall be held upon not less than ten days' written notice to the aggrieved party and to every managed care plan that made the filing; and

(4) If, after the hearing, the commissioner finds that the filing does not meet the requirements of this article, the commissioner shall issue an order specifying in what respects the filing fails to meet the

requirements of this article, and stating when, within a reasonable period, the filing shall be deemed no longer effective. Copies of the order shall be sent to the applicant and to every affected managed care plan. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

(e) The notices, hearings, orders, and appeals referred to in this section, in all applicable respects, shall be subject to chapter 91, unless expressly provided otherwise.

§431: -109 Managed care plans; prohibited activity. (a) Except as permitted in this article, no managed care plan shall:

(1) Attempt to monopolize, or combine or conspire with any other person to monopolize an insurance market; or

(2) Engage in a boycott, on a concerted basis, of an insurance market.

(b) Except as permitted in this article, no managed care plan shall make any arrangement with any other person that has the purpose or effect of restraining trade unreasonably or of substantially lessening competition in the business of insurance.

§431: -110 Information to be furnished to enrollees; hearings and appeals of enrollees. Every managed care plan that makes its own rates, within a reasonable time after receiving written request therefor and upon payment of reasonable charges as it may make, shall furnish to any enrollee affected by a rate made by it or to the authorized representative of the enrollee, all pertinent information as to the rate.

§431: -111 False or misleading information. No person or organization shall wilfully withhold information from or knowingly give false or misleading information to the commissioner, any statistical agency designated by the commissioner, or any managed care plan, which will affect the rates or premiums chargeable under this article. Violation of this section shall subject the one guilty of the violation to the penalties provided in section 431: -112.

§431: -112 Penalties. (a) If the commissioner finds that any person or organization has violated any provision of this article, the commissioner may impose a penalty of not more than $500 for each violation; provided that if the commissioner finds the violation to be wilful, the commissioner may impose a penalty of not more than $5,000 for each violation. The penalties may be in addition to any other penalty provided by

law. For purposes of this section, any managed care plan using a rate for which the managed care plan has failed to file the rate, supplementary rating information, underwriting rules or guides, or supporting information as required by this article, shall have committed a separate violation for each day the failure to file continues.

(b) The commissioner may suspend the license or operating authority of any managed care plan that fails to comply with an order of the commissioner within the time limit in the order, or any extension thereof that the commissioner may grant. The commissioner shall not suspend the license of any managed care plan for failure to comply with an order until the time prescribed for an appeal from the order has expired or, if an appeal has been taken, until the order has been affirmed. The commissioner may determine when a suspension of license or operating authority shall become effective and it shall remain in effect for the period fixed by the commissioner unless the commissioner modifies or rescinds the suspension, or until the order upon which the suspension is based is modified, rescinded, or reversed.

(c) No penalty shall be imposed and no license or operating authority shall be suspended or revoked except upon a

written order of the commissioner, stating the commissioner's findings, made after a hearing held upon not less than ten days' written notice to the person or organization. The notice shall specify the alleged violation.

§431: -113 Hearing procedure and judicial review. (a) Any managed care plan aggrieved by any order or decision of the commissioner made without a hearing, within thirty days after notice of the order to the managed care plan, may make written request to the commissioner for a hearing. The commissioner shall hold a hearing within thirty days after receipt of the request, and shall give not less than seven working days' written notice of the time and place of the hearing. Within fifteen days after the hearing is completed, the commissioner shall affirm, reverse, or modify the commissioner's previous action, specifying the reasons for the commissioner's decision. Pending the hearing and decision, the commissioner may suspend or postpone the effective date of the commissioner's previous action.

(b) Any final order or decision of the commissioner may be reviewed in the circuit court of the first circuit and an appeal from the decision of the court shall lie to the supreme court.

The review shall be taken and had in the manner provided in chapter 91."

SECTION 3. Section 432:1-102, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Article 2 [~~and~~], article 13, and article ___ of chapter 431, and the powers there granted to the commissioner, shall apply to managed care plans, health maintenance organizations, or medical indemnity or hospital service associations, which are owned or controlled by mutual benefit societies, so long as [~~such~~] the application in any particular case is in compliance with and is not preempted by applicable federal statutes and regulations."

SECTION 4. Section 432:1-403, Hawaii Revised Statutes, is amended to read as follows:

"**§432:1-403 Nonprofit medical, hospital indemnity associations; tax exemption.** Every association or society organized and operating under this article solely as a nonprofit medical indemnity or hospital service association or society or both shall be, from the time of such organization, exempt from every state, county and municipal tax, except unemployment compensation tax[~~.~~]; provided that the general excise tax shall apply to an association or society that fails to provide

reimbursements pursuant to subsection 431: -106(a). Nothing in this section shall be deemed to exempt the association or society from liability to withhold the taxes payable by its employees and to pay the same to the proper collection officers, and to keep such records, and make such returns and reports, as may be required in the case of other corporations, associations or societies similarly exempted from such taxes."

SECTION 5. Section 432D-19, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Article 2 [~~and~~], article 13, and article ___ of chapter 431, and the power there granted to the commissioner, shall apply to health maintenance organizations, so long as [~~such~~] the application in any particular case is in compliance with and is not preempted by applicable federal statutes and regulations."

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect on January 1, 2008; provided that this Act shall be repealed on January 1, 2011.

S.B. NO. 12
S.D. 2
H.D. 2

Report Title:
Health Insurance; Rate Regulation

Description:
Prohibits health insurance rates that are excessive, inadequate or unfairly discriminatory. Requires health care insurers to submit rate filings for approval by the insurance commissioner. Establishes penalties and appeal procedures. (SB12 HD2)