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# A BILL FOR AN ACT

RELATING TO HEALTH INSURANCE RATE REGULATION.

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

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

4           Act 74 assisted the state economy by stabilizing health  
5 insurance, a significant fixed cost borne by Hawaii employers  
6 and employees to help mitigate the economic effects of the  
7 terrorist acts of September 11, 2001. Act 74 regulated health  
8 insurance rates to protect the public interest and to help  
9 ensure that health insurance rates are not excessive,  
10 inadequate, or unfairly discriminatory in a manner similar to  
11 the way that motor vehicle, workers' compensation, homeowners',  
12 and other property and casualty insurance lines are presently  
13 regulated. In addition, Act 74 ensured that rates would not be  
14 confiscatory or predatory.

15           The 2002 legislature found that rate regulation of other  
16 lines of insurance, such as motor vehicle, homeowners', and  
17 workers' compensation, had resulted in premium decreases from



1 1997 to 2002, while unregulated health insurance rates rose over  
2 the same period. The 2002 legislature found, and this  
3 legislature agrees, that rate regulation ensures that rates are  
4 not excessive, thereby protecting employers and employees from  
5 unduly burdensome and unwarranted premium increases. Rate  
6 regulation also ensures that rates are adequate to promote the  
7 long-term viability of health care plans and are actuarially  
8 prudent, while preventing predatory pricing.

9       Unfortunately, Act 74 was repealed on June 30, 2006,  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

11       The purpose of this Act is to re-establish a health  
12 insurance rate regulation.

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

16                                   **"ARTICLE**

17                                   **HEALTH INSURANCE RATE REGULATION**

18       **§431: -101 Scope and purpose.** (a) This article shall  
19 apply to all types of health insurance offered by managed care  
20 plans.

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



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

- 3 (1) Prohibit or discourage reasonable competition; or
- 4 (2) Prohibit or encourage, except to the extent necessary  
5 to accomplish the aforementioned purposes, uniformity  
6 in insurance rates, rating systems, rating plans, or  
7 practices.

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

10 **§431: -102 Definitions.** As used in this article:

11 "Commissioner" means the insurance commissioner.

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

15 "Managed care plan" or "plan" means a health plan as  
16 defined in chapter 431:10A, 432, or 432D, regardless of form,  
17 offered or administered by a health care insurer, including, but  
18 not limited to, a mutual benefit society or a health maintenance  
19 organization, mutual benefit societies of employee  
20 organizations, or voluntary employee beneficiary associations,  
21 but shall not include disability insurers licensed under chapter  
22 431.



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

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

10 "Supporting information" means:

- 11 (1) The experience and judgment of the filer and the  
12 experience or data of other organizations relied on by  
13 the filer;
- 14 (2) The interpretation of any other data relied upon by  
15 the filer; and
- 16 (3) Descriptions of methods used in making the rates and  
17 any other information required by the commissioner to  
18 be filed.

19 **§431: -103 Making of rates.** (a) Rates shall not be  
20 excessive, inadequate, or unfairly discriminatory and shall be  
21 reasonable in relation to the costs of the benefits provided.



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

4 **§431: -104 Rate adjustment mandates.** (a) Except as  
5 otherwise provided by law, the commissioner may mandate filings  
6 for health insurance under section 431: -105 when the  
7 commissioner has actuarially sound information that current  
8 rates may be excessive, inadequate, or unfairly discriminatory.

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

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

13 **§431: -105 Rate filings.** (a) Every managed care plan  
14 shall file in triplicate with the commissioner, every rate,  
15 charge, classification, schedule, practice, or rule and every  
16 modification of any of the foregoing that it proposes to use.  
17 Every filing shall state its proposed effective date and shall  
18 indicate the character and extent of the coverage contemplated.  
19 The filing also shall include a report on investment income.

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



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

- 9 (1) Its interpretation of any statistical data upon which  
10 it relies;
- 11 (2) The experience of other managed care plans; or
- 12 (3) Any other relevant factors.

13 (d) When a filing is not accompanied by supporting  
14 information or the commissioner does not have sufficient  
15 information to determine whether the filing meets the  
16 requirements of this article, the commissioner shall require the  
17 managed care plan to furnish additional information and, in that  
18 event, the waiting period shall commence as of the date the  
19 information is furnished. Until the requested information is  
20 provided, the filing shall not be deemed complete or filed and  
21 the filing shall not be used by the managed care plan. If the  
22 requested information is not provided within a reasonable time



1 period, the filing may be returned to the managed care plan as  
2 not filed and not available for use. Rates shall be open to  
3 public inspection upon filing with the commissioner; provided  
4 that supporting and supplementary rating information filed with  
5 the commissioner shall be treated as confidential, proprietary  
6 information and shall not be subject to public inspection.

7 (e) Rates shall be established in accordance with  
8 actuarial principles, based on reasonable assumptions, and  
9 supported by adequate supporting and supplementary rating  
10 information. After reviewing a managed care plan's filing, the  
11 commissioner may require that the managed care plan's rates be  
12 based upon the managed care plan's own loss and expense  
13 information.

14 (f) The commissioner shall review filings promptly after  
15 the filings have been made to determine whether the filings meet  
16 the requirements of this article.

17 (g) Except as provided herein, each filing shall be on  
18 file for a waiting period of thirty days before the filing  
19 becomes effective. The period may be extended by the  
20 commissioner for an additional period not to exceed thirty days  
21 if the commissioner gives written notice within the waiting  
22 period to the managed care plan that made the filing, that the



1 commissioner needs the additional time for the consideration of  
2 the filing. Upon written application by the managed care plan,  
3 the commissioner may authorize a filing that the commissioner  
4 has reviewed, to become effective before the expiration of the  
5 waiting period or any extension thereof. A filing shall be  
6 deemed to meet the requirements of this article unless  
7 disapproved by the commissioner, as provided in section  
8 431: -107, within the waiting period or any extension thereof.  
9 The rates shall be deemed to meet the requirements of this  
10 article until the time the commissioner reviews the filing and  
11 so long as the filing remains in effect.

12 (h) If the commissioner finds that a filing does not meet  
13 the requirements of this article, the commissioner, as provided  
14 in section 431: -107, shall send the managed care plan a notice  
15 of disapproval within the applicable thirty-day period or  
16 thirty-day extension provided by subsection (g).

17 (i) The commissioner, by written order, may suspend or  
18 modify the requirement of filing as to any class of health  
19 insurance, subdivision, or combination thereof, or as to classes  
20 of risks, the rates for which cannot practicably be filed before  
21 they are used. The order shall be made known to the affected  
22 managed care plan. The commissioner may make examinations that





1 the commissioner deems advisable to ascertain whether any rates  
2 affected by the order meet the standards set forth in section  
3 431: -103.

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

7 (k) The commissioner may make the following rate effective  
8 when filed: any special filing with respect to any class of  
9 health insurance, subdivision, or combination thereof that is  
10 subject to individual risk premium modification and has been  
11 agreed to under a formal or informal bid process.

12 (l) For managed care plans having annual premium revenues  
13 of less than \$10,000,000, the commissioner may adopt rules and  
14 procedures that will provide the commissioner with sufficient  
15 facts necessary to determine the reasonableness of the proposed  
16 rates without unduly burdening the managed care plan and its  
17 enrollees; provided that the rates meet the standards of section  
18 431: -103.

19 (m) Subsections (a) through (l) shall not apply to third  
20 party administrator services, prepaid dental insurance offered  
21 by managed care plans, prepaid vision insurance offered by  
22 managed care plans and disability insurers licensed under



1 chapter 431. For managed care plans with rates based totally or  
2 in part on the individual group's claims experience, insurers  
3 subject to this subsection shall submit to the commissioner for  
4 approval descriptions of the methodology to be used in creating  
5 rates and every modification thereof that it proposes to use.  
6 The description of methodology shall contain specific  
7 information allowing a determination of rates that meet the  
8 standards of section 431: -103(a). Every filing shall state  
9 its proposed effective date and shall indicate the character and  
10 extent of the coverage contemplated. Complete supporting and  
11 supplementary rating information for rates shall be maintained  
12 and made available to the commissioner upon request.

13 **§431: -106 Policy revisions that alter coverage.** All  
14 plan revisions that alter coverage in any manner shall be filed  
15 with the commissioner. After review by the commissioner, the  
16 commissioner shall determine whether a rate filing for the plan  
17 revision must be submitted in accordance with section  
18 431: -105.

19 **§431: -107 Disapproval of filings.** (a) If, within the  
20 waiting period or any extension of the waiting period as  
21 provided in section 431: -105, the commissioner finds that a  
22 filing does not meet the requirements of this article, the



1 commissioner shall send to the managed care plan that made the  
2 filing, written notice of disapproval of the filing specifying  
3 in what respects the filing fails to meet the requirements of  
4 this article, specifying the actuarial, statutory, and  
5 regulatory basis for the disapproval, including a detailed  
6 explanation of the application thereof that resulted in  
7 disapproval, and stating that the filing shall not become  
8 effective.

9 (b) Whenever a managed care plan has no legally effective  
10 rates as a result of the commissioner's disapproval of rates, a  
11 finding pursuant to subsection (c) that a filing is no longer  
12 effective, or other act, interim rates shall be established  
13 within ten days of disapproval, or other act, as follows:

14 (1) The commissioner shall specify interim rates  
15 sufficient to protect the interests of the managed  
16 care plan and its enrollees, ensure the solvency of  
17 the managed care plan, maintain the plan's health care  
18 delivery, and prevent any impairment of enrollees'  
19 health care benefits. The interim rate shall be no  
20 less than the median between the existing rate and the  
21 disapproved rate. When a new rate becomes legally  
22 effective and the new rate is higher than the interim



1 rate, the commissioner shall allow the managed care  
2 plan to exact a surcharge on premiums retroactive to  
3 the time when the interim rate was first imposed. If  
4 the new rate is lower than the interim rate, the  
5 commissioner may order that the difference be applied  
6 to stabilize future rates or be refunded to current  
7 enrollees of the managed care plan;

8 (2) If a filing is disapproved, in whole or in part, a  
9 petition and demand for a contested case hearing may  
10 be filed in accordance with chapter 91. The managed  
11 care plan shall have the burden of proving that the  
12 disapproval is not justified; or

13 (3) If a filing is approved, a contested case hearing in  
14 accordance with chapter 91 may be convened pursuant to  
15 subsection (c) to determine if the approved rates  
16 comply with the requirements of this article. If an  
17 appeal is taken from the commissioner's approval or if  
18 subsequent to the approval the commissioner convenes a  
19 hearing pursuant to subsection (c), the filing of the  
20 appeal or the commissioner's notice of hearing shall  
21 not stay the implementation of the rates approved by



1           the commissioner, or the rates currently in effect,  
2           whichever is higher.

3           (c) If at any time subsequent to the applicable review  
4 period provided for in section 431: -105, the commissioner  
5 finds that a filing does not comply with the requirements of  
6 this article, the commissioner shall order a hearing upon the  
7 filing. The hearing shall be held upon not less than ten days'  
8 written notice to every managed care plan that made such a  
9 filing. The notice shall specify the matters to be considered  
10 at the hearing and state the specific factual and legal grounds  
11 to support the commissioner's finding of noncompliance. If,  
12 after a hearing the commissioner finds that a filing does not  
13 meet the requirements of this article, the commissioner within  
14 thirty days of the hearing, shall issue an order specifying in  
15 what respects the filing fails to meet the requirements, and  
16 stating when, within a reasonable period thereafter, the filing  
17 shall be deemed no longer effective. Copies of the order shall  
18 be sent to each managed care plan whose rates are affected by  
19 the order. The order shall not affect any contract or policy  
20 made or issued prior to the expiration of the period set forth  
21 in the order.



- 1           (d)   (1) Any enrollee of a managed care plan or  
2                   organization that purchases health insurance from a  
3                   managed care plan aggrieved with respect to any filing  
4                   that is in effect may make a written demand to the  
5                   commissioner for a hearing thereon; provided that the  
6                   managed care plan that made the filing shall not be  
7                   authorized to proceed under this subsection;
- 8           (2) The demand shall specify the grounds to be relied upon  
9                   by the aggrieved enrollee or organization and the  
10                  demand shall show that the enrollee or organization  
11                  has a specific economic interest affected by the  
12                  filing;
- 13          (3) If the commissioner finds that:
- 14                  (A) The demand is made in good faith;
- 15                  (B) The applicant would be so aggrieved if the  
16                          enrollee's or organization's grounds are  
17                          established; and
- 18                  (C) The grounds otherwise justify a hearing;
- 19                  The commissioner, within thirty days after receipt of  
20                  the demand, shall hold a hearing. The hearing shall  
21                  be held upon not less than ten days' written notice to  
22                  the aggrieved party and to every managed care plan



1 that made the filing. The aggrieved party shall bear  
2 the burden of proving that the filing fails to meet  
3 the standards set forth in section 431: -103; and

4 (4) If, after the hearing, the commissioner finds that the  
5 filing does not meet the requirements of this article,  
6 the commissioner shall issue an order specifying in  
7 what respects the filing fails to meet the  
8 requirements of this article, and stating when, within  
9 a reasonable period, the filing shall be deemed no  
10 longer effective. Copies of the order shall be sent  
11 to the applicant and to every affected managed care  
12 plan. The order shall not affect any contract or  
13 policy made or issued prior to the expiration of the  
14 period set forth in the order.

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

18 **§431: -108 Managed care plans; prohibited activity.** (a)  
19 Except as permitted in this article, no managed care plan shall:

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



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

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

8 **§431: -109 Information to be furnished enrollees;**  
9 **hearings and appeals of enrollees.** Every managed care plan that  
10 makes its own rates, within a reasonable time after receiving  
11 written request therefore and upon payment of reasonable charges  
12 as it may make, shall furnish to any enrollee affected by a rate  
13 made by it or to the authorized representative of the enrollee,  
14 all pertinent information as to the rate; provided that the  
15 managed care plan shall not be required to disclose supporting  
16 information and supplementary rating information protected  
17 pursuant to section 431: -105(d).

18 **§431: -110 False or misleading information.** No person or  
19 organization shall wilfully withhold information from or  
20 knowingly give false or misleading information to the  
21 commissioner, any statistical agency designated by the  
22 commissioner, or any managed care plan, which will affect the





1 rates or premiums chargeable under this article. Violation of  
2 this section shall subject the one guilty of the violation to  
3 the penalties provided in section 431: -111.

4 **§431: -111 Penalties.** (a) If the commissioner finds  
5 that any person or organization has violated any provision of  
6 this article, the commissioner may impose a penalty of not more  
7 than \$500 for each violation; provided that if the commissioner  
8 finds the violation to be wilful, the commissioner may impose a  
9 penalty of not more than \$5,000 for each violation. The  
10 penalties may be in addition to any other penalty provided by  
11 law. For purposes of this section, any managed care plan using  
12 a rate for which the managed care plan has failed to file the  
13 rate, supplementary rating information, underwriting rules or  
14 guides, or supporting information as required by this article,  
15 shall have committed a separate violation for each day the  
16 failure to file continues.

17 (b) The commissioner may suspend the license or operating  
18 authority of any managed care plan that fails to comply with an  
19 order of the commissioner within the time limited by the order,  
20 or any extension thereof that the commissioner may grant. The  
21 commissioner shall not suspend the license of any managed care  
22 plan for failure to comply with an order until the time



1 prescribed for an appeal from the order has expired or, if an  
2 appeal has been taken, until the order has been affirmed. The  
3 commissioner may determine when a suspension of license or  
4 operating authority shall become effective and it shall remain  
5 in effect for the period fixed by the commissioner unless the  
6 commissioner modifies or rescinds the suspension, or until the  
7 order upon which the suspension is based is modified, rescinded,  
8 or reversed.

9 (c) No penalty shall be imposed and no license or  
10 operating authority shall be suspended or revoked except upon a  
11 written order of the commissioner, stating the commissioner's  
12 findings, made after a hearing held upon not less than ten days'  
13 written notice to the person or organization. The notice shall  
14 specify the alleged violation.

15 **§431: -112 Hearing procedure and judicial review. (a)**  
16 Any managed care plan aggrieved by any order or decision of the  
17 commissioner made without a hearing, within thirty days after  
18 notice of the order to the managed care plan, may make written  
19 request to the commissioner for a hearing. The commissioner  
20 shall hold a hearing within twenty days after receipt of the  
21 request, and shall give not less than ten days' written notice  
22 of the time and place of the hearing. The commissioner shall



1 promptly conduct and complete the hearing. Within fifteen days  
2 after the hearing is completed, the commissioner shall affirm,  
3 reverse, or modify the commissioner's previous action,  
4 specifying the reasons for the commissioner's decision. Pending  
5 the hearing and decision, the commissioner may suspend or  
6 postpone the effective date of the commissioner's previous  
7 action.

8 (b) Any final order or decision of the commissioner may be  
9 reviewed in the circuit court of the first circuit and an appeal  
10 from the decision of the court shall lie to the supreme court.  
11 The review shall be taken and had in the manner provided in  
12 chapter 91."

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

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



1 SECTION 4. Section 432D-19, Hawaii Revised Statutes, is  
2 amended by amending subsection (d) to read as follows:

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

9 SECTION 5. Statutory material to be repealed is bracketed  
10 and stricken. New statutory material is underscored.

11 SECTION 6. This Act shall take effect on January 1, 2020.



**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. (SD1)

