S.B. NO. 1405

JAN 22 2007

A BILL FOR AN ACT

RELATING TO INSURANCE.

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

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding to part VI of article 10A a new section to be appropriately designated and to read as follows:

"<u>**§431:10A-   Managed care plan reserves.** (a) If a managed care plan's current net worth exceeds thirty 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 returned to either the subscribers, the enrollees or the customers in accordance with a plan submitted by the managed care plan to and approved by the commissioner. 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. This subsection shall not apply to disability insurance.</u>

<u>(b) Nothing in this section shall be construed to alter or eliminate the minimum reserve requirements applicable to the</u>

managed care plan; provided that in the event of a conflict between this section and an applicable minimum reserve requirement, the minimum reserve requirement shall control.

(c) The commissioner may waive the requirements of subsection (a) if, in the commissioner's sole discretion, the commissioner determines that:

(1) The distribution of excess reserves would impair the solvency of the managed care plan;

(2) The managed care plan may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees as a result of the distribution of excess reserves;

(3) The managed care plan has demonstrated that the excess reserves are needed because the managed care plan is planning to increase its enrollment, make new capital investments, or has some other valid reason for requiring the excess reserves; or

(4) The managed care plan has demonstrated that the excess reserves are the result of temporary fluctuations in investments and will not persist.

(d) For purposes of this section, "managed care plan" has the same meaning as set forth in section 432E-1."

SECTION 2. Chapter 432, Hawaii Revised Statutes, is amended by adding to article 1 a new section to be appropriately designated and to read as follows:

"**§432:1- Managed care plan reserves.** (a) If a managed care plan's current net worth exceeds thirty 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 returned to either the subscribers, the enrollees or the customers in accordance with a plan submitted by the managed care plan to and approved by the commissioner. 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. This subsection shall not apply to disability insurance.

(b) Nothing in this section shall be construed to alter or eliminate the minimum reserve requirements applicable to the managed care plan under section 432:1-407; provided that in the event of a conflict between this section and an applicable minimum reserve requirement, the minimum reserve requirement shall control.

(c) The commissioner may waive the requirements of subsection (a) if, in the commissioner's sole discretion, the commissioner determines that:

(1) The distribution of excess reserves would impair the solvency of the managed care plan;

(2) The managed care plan may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees as a result of the distribution of excess reserves;

(3) The managed care plan has demonstrated that the excess reserves are needed because the managed care plan is planning to increase its enrollment, make new capital investments, or has some other valid reason for requiring the excess reserves; or

(4) The managed care plan has demonstrated that the excess reserves are the result of temporary fluctuations in investments and will not persist.

(d) For purposes of this section, "managed care plan" has the same meaning as set forth in section 432E-1."

SECTION 3. Chapter 432D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§432D- Managed care plan reserves.** (a) If a managed care plan's current net worth exceeds thirty 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 returned to either the subscribers, the enrollees or the customers in accordance with a plan submitted by the managed care plan to and approved by the commissioner. 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. This subsection shall not apply to disability insurance.

(b) Nothing in this section shall be construed to alter or eliminate the minimum reserve requirements applicable to the managed care plan under section 432D-8; provided that in the event of a conflict between this section and any applicable minimum reserve requirement, the minimum reserve requirement shall control.

(c) The commissioner may waive the requirements of subsection (a) if, in the commissioner's sole discretion, the commissioner determines that:

(1) The distribution of excess reserves would impair the solvency of the managed care plan;

(2) The managed care plan may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees as a result of the distribution of excess reserves;

(3) The managed care plan has demonstrated that the excess reserves are needed because the managed care plan is planning to increase its enrollment, make new capital investments, or has some other valid reason for requiring the excess reserves; or

(4) The managed care plan has demonstrated that the excess reserves are the result of temporary fluctuations in investments and will not persist.

(d) For purposes of this section, "managed care plan" has the same meaning as set forth in section 432E-1."

SECTION 4. New statutory material is underscored.

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

INTRODUCED BY: ______________________

BY REQUEST

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JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO INSURANCE.

PURPOSE: To set a maximum limit of thirty per cent of annual expenses on the reserves that a managed care plan may hold; to require that refunds of excess reserves be made to subscribers, customers, or enrollees of the managed care plan; to allow the commissioner to waive the requirement of a refund if enrollees of a managed care plan would be jeopardized by it, if the managed care plan would need the reserves to increase its enrollment or make capital investments, or if the excess to be refunded is the result of temporary fluctuations in investments; and to exclude disability insurance from the excess reserve requirements.

MEANS: Add a new section to chapters 431:10A, 432:1, and 432D, Hawaii Revised Statutes.

JUSTIFICATION: Managed care plans need monetary reserves to cover unanticipated claims, expenses, and unforeseen business fluctuations. However, very large reserves can be used to subsidize premium rates, either through high investment income or spending of the reserves. This can result in an unfair pricing advantage for a managed care plan with a very large reserve. This advantage can be a deterrent to new entrants into the marketplace and can restrict the growth of competitors once they enter. These effects may result in less competition in the marketplace, to the detriment of consumers and providers.

Capping the maximum allowed reserve at thirty per cent of annual expenses provides enough of a safety cushion to meet the uncertainties faced by a managed care plan.

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Thirty per cent of annual expenses is more than adequate to protect the insured against an insolvency. Since health insurance does not have a long liability tail, the managed care plan's corresponding obligation to cover the insured generally ranges from one to two months of expenses during a liquidation. Current statutory requirements call for eight per cent of annual expenses, or approximately one month of expenses, as a minimum reserve requirement. Between the existing one-month minimum and the proposed maximum of thirty per cent of expenses for reserves, there is plenty of cushion for a managed care plan to weather the cyclical ups and downs of the industry, pay for capital expenditures, and handle unforeseen developments in the medical, economic, business, or regulatory environment.

Allowing the insurance commissioner to approve the plan for refunding excess reserves will allow for a fair procedure to be implemented.

Allowing the insurance commissioner the discretionary authority to waive the refund of excess reserves if enrollees of the managed care plan would be jeopardized by it is advisable because unforeseen circumstances affecting a managed care plan's business or market environment may arise. Allowing the insurance commissioner the discretionary authority to waive the refund of excess reserves if the insurer needs the larger reserve to increase its enrollment or make capital investments is advisable to avoid an undue restraint on management's strategic business decision-making. Allowing the insurance commissioner the discretionary authority to waive the refund of excess reserves where the excess is the temporary result of investment fluctuations is advisable to avoid refunds that would result in insufficient insurer reserves.

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Impact on the public: There should be a positive impact on the public as managed care plans refund excess reserves to their subscribers, enrollees or customers.

Impact on the department and other agencies: None.

GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	CCA-106.
OTHER AFFECTED AGENCIES:	None.
EFFECTIVE DATE:	Upon approval.