

JAN 26 2009

A BILL FOR AN ACT

RELATING TO HAWAII EMPLOYERS' MUTUAL INSURANCE COMPANY.

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

1 SECTION 1. Chapter 431, article 14A, Hawaii Revised
2 Statutes, is amended by adding a new section to be appropriately
3 designated and to read as follows:

4 "§431:14A- Medical safety and ethical standards. (a)
5 The company shall adopt the Health and Ethics Policies of the
6 American Medical Association House of Delegates and the American
7 Medical Association's Principles of Medical Ethics and shall
8 require that physician policyholders comply with all policies
9 and standards therein.

10 (b) The company shall promote medical safety programs to
11 members by:

12 (1) Analyzing reports of medical error by members to help
13 determine the cause of those errors;

14 (2) Conducting studies, including surveys of members, for
15 risk and hazard identification and assessments by
16 medical safety experts;



1 (3) Conducting education designed to prevent frequently
2 occurring errors and to respond to members' expressed
3 interest in professional development; and

4 (4) Inspecting work sites and investigating claims against
5 members to promote medical safety and eliminate
6 hazards.

7 (c) Company representatives shall have reasonable access
8 to the premises or work site of any policyholder or applicant
9 during regular working hours to carry out medical safety
10 evaluations.

11 (d) Upon completion of a detailed investigation and
12 recognition of a high regard for medical safety, a deviation may
13 be applied to the rate structure of that member noting special
14 recognition of the member's efforts to ensure medical safety."

15 SECTION 2. Section 431:14A-101, Hawaii Revised Statutes,
16 is amended to read as follows:

17 "~~§~~**431:14A-101**~~§~~ **Purpose.** The Hawaii employers' mutual
18 insurance company is established to provide workers'
19 compensation coverage to employers of the State and to provide
20 medical malpractice insurance to physicians licensed to practice
21 in the State under chapter 453 at the highest level of service
22 with the lowest possible cost, consistent with reasonable and



1 applicable actuarial standards and the sound financial integrity
2 of the company. The purposes of the company are to provide the
3 highest standard of workplace safety and loss prevention, to
4 provide the highest standard of medical safety, to encourage
5 employer and physician involvement, and to be responsive to each
6 policyholder's experience, practice, and operating
7 effectiveness."

8 SECTION 3. Section 431:14A-102, Hawaii Revised Statutes,
9 is amended by adding a new definition to be appropriately
10 inserted and to read as follows:

11 "Medical malpractice insurance" means insurance coverage
12 against the legal liability of the insured and against loss,
13 damage, or expense incident to a claim arising out of the death
14 or injury of any person as the result of negligence or
15 malpractice in rendering professional service by any licensed
16 physician."

17 SECTION 4. Section 431:14A-103, Hawaii Revised Statutes,
18 is amended to read as follows:

19 **"§431:14A-103 Hawaii employers' mutual insurance company,**
20 **established.** (a) The Hawaii employers' mutual insurance
21 company is established as an independent corporation to provide
22 workers' compensation insurance, medical malpractice insurance,



1 and related services to Hawaii employers. The company may be
2 reorganized as a nonprofit corporation under chapter 414D.

3 (b) The company shall be organized and operated as a
4 domestic mutual insurance company. The company shall comply
5 with, unless specifically excluded, all requirements of the
6 insurance code regarding a domestic mutual insurance company.
7 The company shall not be an agency of the State. The company or
8 its liabilities shall not be deemed to constitute debts or
9 liabilities of the State of Hawaii or pledges of the full faith
10 and credit of the State. The company shall write workers'
11 compensation insurance policies covering Hawaii employers and
12 shall write medical malpractice insurance policies covering
13 physicians licensed to practice in Hawaii pursuant to chapter
14 453, as required or authorized by law and employers' or
15 physicians' liability to the same extent as any other private
16 insurer. The company shall not write other lines of insurance,
17 reinsurance, or excess insurance.

18 (c) The company may insure Hawaii employers against their
19 liability for compensation or damages for injury or death under
20 the United States Longshoremen's and Harbor Workers'
21 Compensation Act or federal or maritime laws like any other
22 private insurer.



1 (d) The company's assets shall consist of real and
2 personal property and shall include all premiums and other
3 moneys paid to the company, all property, and other income
4 acquired, earned, or otherwise gained by the use of premiums and
5 other moneys paid to the company by deposits, investments,
6 exchanges, and other transactions. The company's assets shall
7 be the sole property of the company and shall be used
8 exclusively by the company for the operation and obligations of
9 the company.

10 (e) Notwithstanding any other law to the contrary, the
11 company shall be excluded from the surplus requirements of
12 domestic mutual insurers from January 1, 1997, through
13 December 31, 2007. The company is also excluded during this
14 time period from any assessments by the Hawaii hurricane relief
15 fund otherwise required by section 431P-5(b)(8); provided that
16 the exclusion shall apply to the first \$25,000,000 of written
17 premiums in each calendar year; and provided further that annual
18 written premiums in excess of \$25,000,000 shall be assessed in
19 accordance with section 431P-5(b)(8).

20 (f) The company is exempt from participation, and shall
21 not join, contribute financially to, nor be entitled to the
22 protection of, any plan, association, guaranty, insolvency fund,



1 or education and training fund authorized or required by this
2 chapter. Notwithstanding the foregoing exemptions, beginning
3 January 1, 2008, the company shall participate in the property
4 and liability insurance guaranty association, pursuant to
5 sections 431:16-101 to 431:16-117; provided that the company
6 shall meet the surplus requirements applicable to all other
7 domestic insurers under chapter 431 effective January 1, 2008.

8 (g) On or after January 1, 1997, the company shall provide
9 workers' compensation coverage to Hawaii employers otherwise
10 entitled to coverage but not able to or not electing to purchase
11 coverage in the voluntary insurance market, and not authorized,
12 either individually or as a part of a group, to self-insure. An
13 authorized self-insured is eligible for coverage upon
14 termination of self-insurance.

15 (h) On or after January 1, 2010, the company shall provide
16 medical malpractice insurance coverage to physicians licensed to
17 practice in Hawaii, pursuant to chapter 453, who are otherwise
18 entitled to coverage but are not able to or do not elect to
19 purchase coverage in the voluntary insurance market and who are
20 not eligible, either individually or as a part of a cooperative
21 corporation, to enter into unincorporated interindemnity or
22 reciprocal contracts pursuant to chapter 435E."



1 SECTION 5. Section 431:14A-104, Hawaii Revised Statutes,
2 is amended to read as follows:

3 "§431:14A-104 Company divisions. (a) For purposes of
4 providing representation on the board, the company shall consist
5 of industry divisions and a high risk division. Assignments to
6 each division shall be made by the administrator with the
7 approval of the board. The initial company divisions shall
8 include:

- 9 (1) Manufacturing and producers;
- 10 (2) Services, entertainment, and amusement;
- 11 (3) Professions;
- 12 (4) Construction;
- 13 (5) Wholesale and retail sales;
- 14 (6) Transportation and public utilities;
- 15 (7) Finance, insurance, and real estate; [~~and~~]
- 16 (8) Medical malpractice; and
- 17 [~~+8~~] (9) High risk.

18 (b) An employer with two or more lost-time claims greater
19 than \$10,000, and a loss ratio greater than 1.0, over the
20 immediately preceding three years shall be placed in the high
21 risk division.



1 (c) The administrator, with the approval of the board,
2 shall modify the requirements for placing employers in the high
3 risk division if the qualifications result in the high risk
4 division being limited to only those employers with measurable
5 adverse loss ratios, demonstrated accident frequency records, or
6 a demonstrated attitude of noncompliance with workplace safety
7 and health programs or claims management requirements.

8 (d) The administrator, with the approval of the board,
9 shall determine the criteria for placing physicians in the high
10 risk division so as to ensure that the high risk division is not
11 limited to only those physicians who have a demonstrated record
12 of negligence or a demonstrated attitude of noncompliance with
13 medical safety and ethical standards adopted by the company.

14 [~~(d)~~] (e) The company shall give notice to each employer
15 in the high risk division not less than thirty days prior to the
16 policy renewal date requesting a report on the employer's lost-
17 time claims for the policy year. The report shall be used to
18 determine the employer's qualification for continued placement
19 in the high risk division.

20 (f) The company shall give notice to each physician in the
21 high risk division not less than thirty days prior to the policy
22 renewal date requesting a report on all claims filed against the



1 physician for the policy year. The report shall be used to
2 determine the physician's qualification for continued placement
3 in the high risk division.

4 [~~e~~] (g) The company may apply a rating differential and
5 charge a surcharge to any employer or physician placed in the
6 high risk division. The company may make multiple rate filings,
7 consistent with sound actuarial judgment for each
8 classification. These rate filings may be applied to risks in
9 any division.

10 [~~e~~] (h) The contingent liabilities of members provided
11 in section 431:4-317 may be separated so that members assigned
12 to the high risk division have a further contingent liability
13 for deficits in the high risk division; provided that no
14 contingent liability shall be in the aggregate for more than
15 five times the annual premium rate of the member's policy nor
16 for a term of more than one year."

17 SECTION 6. Section 431:14A-105, Hawaii Revised Statutes,
18 is amended to read as follows:

19 "**§431:14A-105 Board of directors, established.** (a) The
20 board of directors of the company shall be responsible for the
21 organization, management, policies, and activities of the
22 company. The board shall consist of [~~nine~~] eleven voting



1 members and one nonvoting member. The voting members shall
2 consist of the following:

3 (1) [~~Eight~~] Nine directors who shall be owners, officers,
4 or employees of policyholders of the company and shall
5 represent each of the company divisions; [~~and~~]

6 (2) One director who shall be a representative of the
7 Hawaii medical association; and

8 [~~+2~~] (3) One director who shall be a public, at-large
9 member elected by the board of directors.

10 The administrator shall be the nonvoting member of the board.

11 (b) The initial eight division directors shall be
12 appointed by the governor within sixty days of June 19, 1996,
13 and shall serve for terms of one year each. The governor shall
14 ensure adequate representation from the major sectors of the
15 economy and workforce in the State.

16 The public, at-large member initially elected by the board
17 shall serve for a term of one year.

18 The initial board of directors shall determine the
19 staggering and length of future directors' terms; provided that
20 no term shall exceed three years. Upon the expiration of the
21 terms of the initial division directors, the company's



1 policyholders in the division represented by the director shall
2 elect the directors.

3 The initial director representing the medical malpractice
4 division and the initial director representing the Hawaii
5 medical association shall be appointed by the governor within
6 sixty days after July 1, 2009 and shall serve for a full term as
7 determined by the initial board of directors pursuant to this
8 subsection. Upon expiration of the first full term of the
9 initial director representing the medical malpractice division,
10 the company's policy holders in the medical malpractice division
11 shall elect the director. Upon expiration of the first full
12 term of the initial director representing the Hawaii medical
13 association, the members of the Hawaii medical association shall
14 elect the director.

15 Each director shall serve for terms as specified by the
16 board unless sooner removed for cause pursuant to rules adopted
17 by the board. Each director shall hold office until a successor
18 is elected as provided in this section. No person shall serve
19 more than two full terms as director. Any other law to the
20 contrary notwithstanding, the election and composition of the
21 board of directors as provided in this section shall be deemed



1 adequate to qualify the company as a mutual insurer under
2 chapter 431.

3 (c) A vacancy on the board shall be filled by appointment
4 of the governor or insurance commissioner in the case of
5 appointed directors, or by election by the company division's
6 policyholders or the board of directors in the case of positions
7 formerly occupied by a director elected by the company
8 division's policyholders or by the board of directors,
9 respectively. The person appointed to fill a vacancy shall
10 serve for the remainder of the term of the person's predecessor.

11 (d) Within one year after appointment, each director shall
12 be a member or an employee of a policyholder of the company and
13 shall continue in such status during the director's term of
14 office. Any director representing a member that fails to
15 maintain workers' compensation insurance or a director who is a
16 physician who fails to maintain medical malpractice insurance
17 from the company shall be disqualified from serving on the
18 board.

19 (e) Each director shall receive necessary traveling and
20 board expenses incurred in the performance of duty as director
21 and a fee commensurate with the duties expected of actual
22 attendance at board meetings.



1 (f) No person shall be a director who has a direct and
2 substantial interest in a competing insurer as:

3 (1) A stockholder (excluding the holding of less than one
4 per cent of the outstanding shares in a publicly
5 traded insurer);

6 (2) An employee;

7 (3) An attorney; or

8 (4) A contracting party (excluding an independent
9 contractor or business owner who does less than
10 twenty-five per cent of its total annual volume of
11 business per year with competing insurers)."

12 SECTION 7. Section 431:14A-107, Hawaii Revised Statutes,
13 is amended by amending subsection (c) to read as follows:

14 "(c) Except as otherwise provided by law, the board may:

15 (1) Transact workers' compensation insurance policies and
16 medical malpractice insurance policies required or
17 authorized by state law to the same extent as any
18 other insurer;

19 (2) Provide the terms and conditions of an insurance
20 policy;



- 1 (3) Provide that any written instrument be executed for
2 the company by the administrator or the
3 administrator's agent;
- 4 (4) Enter into agreements to reinsure all or part of the
5 company's exposure to loss and to limit the risk to
6 the company; and
- 7 (5) Employ persons to administer the company, including
8 legal counsel, accountants, insurance consultants,
9 administrators, qualified actuaries, investment
10 managers, adjustors, other experts, and clerical
11 employees and pay compensation and expenses in
12 connection therewith."

13 SECTION 8. Section 431:14A-115, Hawaii Revised Statutes,
14 is amended to read as follows:

15 "[+]§431:14A-115[+] **Denial, cancellation, and termination.**

16 The company may deny coverage or renewal of an existing policy
17 or may terminate an existing policy of a policyholder or
18 applicant for:

- 19 (1) Nonpayment of an undisputed premium;
- 20 (2) Refusal to permit on-site workplace safety
21 examinations;



1 (3) Failure to comply with workplace safety and health
2 programs required by the company; [~~or~~]

3 (4) Refusal to permit or failure to comply with medical
4 safety evaluations;

5 (5) Failure to comply with medical safety and ethical
6 standards adopted by the company; or

7 [~~4~~] (6) Failure to accurately disclose information
8 concerning the applicant's or policyholder's
9 ownership, change of ownership, operations, or
10 payroll, including the allocation of payroll among
11 state and federal compensation programs, and other
12 information necessary for the board to determine
13 premium rates."

14 SECTION 9. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 10. This Act shall take effect on July 1, 2009.

17 INTRODUCED BY:

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Report Title:

Hawaii Employers' Mutual Insurance Company; Medical Malpractice Insurance

Description:

Requires Hawaii employers' mutual insurance company to provide medical malpractice insurance to physicians licensed to practice in Hawaii.

