

JAN 22 2010

A BILL FOR AN ACT

RELATING TO TELEMEDICINE.

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

1 SECTION 1. The legislature finds that the expansion of
2 internet-based telecommunications has revolutionized the ways
3 that consumers acquire goods and services. In particular, the
4 use of telemedicine services has radically expanded access to
5 physicians and medical services for the people of Hawaii.

6 The legislature finds, however, that not all aspects of an
7 increasingly global economy have kept up with the rapid changes
8 that telecommunications has fostered. Recently, physicians
9 offering telemedicine services have found that their medical
10 malpractice insurance plans may not cover telemedicine services.

11 The purpose of this Act to clarify telemedicine as a
12 practice of medicine, and to require insurers offering medical
13 malpractice insurance coverage to also cover telemedicine
14 services.

15 SECTION 2. Section 431:1-209, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "§431:1-209 General casualty insurance defined. General
18 casualty insurance includes vehicle insurance as defined in



1 section 431:1-208, accident and health or sickness insurance as
2 defined in section 431:1-205, and in addition is insurance:

3 (1) Against legal liability for the death, injury, or
4 disability of any human being, or from damage to
5 property;

6 (2) Of medical, hospital, surgical, and funeral benefits
7 to persons injured, irrespective of legal liability of
8 the insured, when issued with or supplemental to
9 insurance against legal liability for the death,
10 injury, or disability of human beings;

11 (3) Of the obligation accepted by, imposed upon, or
12 assumed by employers under law for death, disablement,
13 or injury to employees;

14 (4) Against loss or damage by burglary, theft, larceny,
15 robbery, forgery, fraud, vandalism, malicious
16 mischief, confiscation, or wrongful conversion,
17 disposal, or concealment, or from any attempt of any
18 of the foregoing; also insurance against loss or
19 damage to moneys, coins, bullion, securities, notes,
20 drafts, acceptances, or any other valuable papers or
21 documents, resulting from any cause, except while in
22 the mail;



- 1 (5) Upon personal effects of individuals, by an all-risk
2 type of policy commonly known as the personal property
3 floater;
- 4 (6) Against loss or damage to glass and its appurtenances
5 resulting from any cause;
- 6 (7) Against any liability and loss or damage to property
7 resulting from accidents to or explosions of boilers,
8 pipes, pressure containers, machinery, or apparatus;
- 9 (8) Against loss of or damage to any property of the
10 insured resulting from the ownership, maintenance, or
11 use of elevators, except loss or damage by fire;
- 12 (9) Against loss or damage to any property caused by the
13 breakage or leakage of sprinklers, water pipes, or
14 containers, or by water entering through leaks or
15 openings in buildings;
- 16 (10) Against loss or damage resulting from failure of
17 debtors to pay their obligations to the insured
18 (credit insurance);
- 19 (11) Against loss of or damage to any domesticated or wild
20 animal resulting from any cause (livestock insurance);
- 21 (12) Against loss of or damage to any property of the
22 insured resulting from collision of any other object



1 with such property, but not including collision to or
2 by vessels, craft, piers, or other instrumentalities
3 of ocean or inland navigation (collision insurance);

4 (13) Against legal liability of the insured, and against
5 loss, damage, or expense incident to a claim of such
6 liability, and including any obligation of the insured
7 to pay medical, hospital, surgical, and funeral
8 benefits to injured persons, irrespective of legal
9 liability of the insured, arising out of the death or
10 injury of any person, or arising out of injury to the
11 economic interest of any person as the result of
12 negligence in rendering expert, fiduciary, or
13 professional service (malpractice insurance); provided
14 that, liability insurance covering the professional
15 services of a physician or surgeon shall include
16 coverage for claims or losses relating to the practice
17 of telemedicine meeting the requirements of section
18 453-1.3;

19 (14) Against any contract of warranty or guaranty which
20 promises service maintenance, parts replacement,
21 repair, money, or any other indemnity in the event of
22 loss of or damage to a motor vehicle or any part



1 thereof from any cause, including loss of or damage to
2 or loss of use of the motor vehicle by reason of
3 depreciation, deterioration, wear and tear, use,
4 obsolescence, or breakage if made by a warrantor or
5 guarantor who or which as such is doing an insurance
6 business; provided that service contracts, as defined
7 and meeting the requirements of chapter 481X, shall
8 not be subject to chapter 431.

9 The doing or proposing to do any business in
10 substance equivalent to the business described in this
11 section in a manner designed to evade the provisions
12 of this section is the doing of an insurance business;
13 and

14 (15) Against any other kind of loss, damage, or liability
15 properly the subject of insurance and not within any
16 other class or classes or type of insurance as defined
17 in sections 431:1-204 to 431:1-211, if such insurance
18 is not contrary to law or public policy."

19 SECTION 3. Section 435C-2, Hawaii Revised Statutes, is
20 amended by amending the definition of "medical malpractice
21 insurance" to read as follows:



1 "Medical malpractice insurance" means insurance coverage
2 against the legal liability of the insured and against loss,
3 damage, or expense incident to a claim arising out of the death
4 or injury of any person as the result of negligence or
5 malpractice in rendering professional service by any licensed
6 physician or hospital[-], including coverage for claims or
7 losses relating to the practice of telemedicine meeting the
8 requirements of section 453-1.3."

9 SECTION 4. Section 435E-1, Hawaii Revised Statutes, is
10 amended by amending the definition of "physician" or "surgeon"
11 to read as follows:

12 "Physician" or "surgeon" means any person licensed to
13 practice medicine or osteopathic medicine under chapter 453[+],
14 or any professional corporation, partnership, or other entity
15 whose stockholders or partners are comprised solely of persons
16 licensed under chapter 453. The term shall also include any
17 person exempt from licensure under section 453-2(b)(3) or 453-
18 2(b)(6) practicing telemedicine meeting the requirements of
19 section 453-1.3."

20 SECTION 5. Section 453-1, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§453-1 Practice of medicine defined. For the purposes of
2 this chapter the practice of medicine by a physician or an
3 osteopathic physician includes the use of drugs and medicines,
4 water, electricity, hypnotism, osteopathic medicine, or any
5 means or method, or any agent, either tangible or intangible,
6 for the treatment of disease in the human subject; provided that
7 when a duly licensed physician or osteopathic physician
8 pronounces a person affected with any disease hopeless and
9 beyond recovery and gives a written certificate to that effect
10 to the person affected or the person's attendant nothing herein
11 shall forbid any person from giving or furnishing any remedial
12 agent or measure when so requested by or on behalf of the
13 affected person.

14 This section shall not amend or repeal the law respecting
15 the treatment of those affected with Hansen's disease.

16 For purposes of this chapter, "osteopathic medicine" means
17 the utilization of full methods of diagnosis and treatment in
18 physical and mental health and disease, including the
19 prescribing and administration of drugs and biologicals of all
20 kinds, operative surgery, obstetrics, radiological, and other
21 electromagnetic emissions, and placing special emphasis on the
22 interrelation of the neuro-musculoskeletal system to all other



1 body systems, and the amelioration of disturbed structure-
2 function relationships by the clinical application of the
3 osteopathic diagnosis and therapeutic skills for the maintenance
4 of health and treatment of disease.

5 The practice of medicine shall include the use of
6 telemedicine meeting the requirements of section 453-1.3."

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

9 SECTION 7. This Act shall take effect upon its approval.

10

INTRODUCED BY:

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Report Title:

Telehealth; Medicine and Surgery; Liability Insurance

Description:

Clarifies telehealth as a practice of medicine. Amends liability insurance provisions to allow for telehealth coverage under medical malpractice insurance.

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