



EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

June 25, 2013

GOV. MSG. NO. 1294

The Honorable Donna Mercado Kim,
President
and Members of the Senate
Twenty-Seventh State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

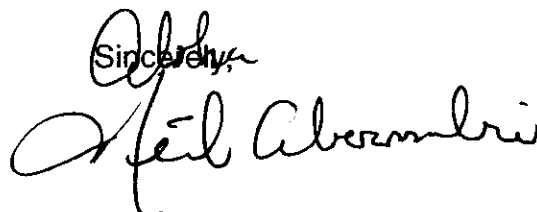
The Honorable Joseph M. Souki,
Speaker and Members of the
House of Representatives
Twenty-Seventh State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Kim, Speaker Souki, and Members of the Legislature:

This is to inform you that on June 25, 2013, the following bill was signed into law:

SB1073 SD2 HD2 CD1

RELATING TO DENTAL SERVICE
CORPORATIONS
ACT 191 (13)

Sincerely,


NEIL ABERCROMBIE
Governor, State of Hawaii

A BILL FOR AN ACT

RELATING TO DENTAL SERVICE CORPORATIONS.

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

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to title 24 to be appropriately designated
3 and to read as follows:

4 **"CHAPTER**

5 **DENTAL INSURERS**

6 § -1 Definitions. As used in this chapter:

7 "Capitated basis" means fixed per member per month payment
8 or percentage of premium payment wherein the provider assumes
9 the full risk for the cost of contracted services without regard
10 to the type, value, or frequency of services provided. For
11 purposes of this chapter, "capitated basis" includes the cost
12 associated with operating staff model facilities.

13 "Carrier" means a dental insurer, a health maintenance
14 organization, an insurer, a nonprofit hospital and medical
15 service corporation, a mutual benefit society, or other entity
16 responsible for the payment of benefits or provision of services
17 under a group contract.

18 "Commissioner" means the insurance commissioner.



1 "Copayment" means an amount an enrollee must pay to receive
2 a specific service which is not fully prepaid.

3 "Dental care services" include the practices, acts, and
4 operations pertaining to dentistry as defined in section 448-1.

5 "Dental insurance plan" means insurance, as defined in
6 section 431:1-201, for dental care services.

7 "Dental insurer" means any person who undertakes to provide
8 or to arrange for or administer one or more dental insurance
9 plans and who has met the requirements of chapter 423.

10 "Dental service corporation" means a corporation
11 established pursuant to section 423-1.

12 "Discontinuance" means the termination of the contract
13 between a group contract holder and a dental insurer due to the
14 insolvency of the dental insurer, and does not refer to the
15 termination of any agreement between any individual subscriber
16 and a dental insurer.

17 "Enrollee" means an individual who is covered by a dental
18 insurer.

19 "Evidence of coverage" means a statement of the essential
20 features and services of the dental insurer coverage that is
21 given to the subscriber by the dental insurer or by the group
22 contract holder.



1 "Grievance" means a written complaint submitted in
2 accordance with the dental insurer's formal grievance procedure
3 by or on behalf of an enrollee regarding any aspect of the
4 dental insurer relative to the enrollee.

5 "Group contract" means a contract for dental care services
6 which by its terms limits eligibility to members of a specified
7 group. The group contract may include coverage for dependents.

8 "Group contract holder" means the person to which a group
9 contract has been issued.

10 "Individual contract" means a contract for dental care
11 services issued to and covering an individual. The individual
12 contract may include dependents of the subscriber.

13 "Insolvent" or "insolvency" means that the dental insurer
14 has been declared insolvent and placed under an order of
15 supervision, rehabilitation, or liquidation by the commissioner
16 or a court of competent jurisdiction.

17 "Net worth" means the excess of total assets over total
18 liabilities; provided that, liabilities shall not include fully
19 subordinated debt.

20 "Participating provider" means a provider as defined in
21 this section, who, under an express or implied contract with the
22 dental insurer or with its contractor or subcontractor, has



1 agreed to provide dental care services to enrollees with an
2 expectation of receiving payment, other than copayment or
3 deductible, directly or indirectly from the dental insurer.

4 "Person" has the same meaning as in section 431:1-212.

5 "Provider" means any person licensed to practice dentistry
6 as defined in section 448-1.

7 "Replacement coverage" means the benefits provided by a
8 succeeding carrier.

9 "Subscriber" means an individual whose employment or other
10 status, except family dependency, is the basis for eligibility
11 for enrollment in the dental insurer, or in the case of an
12 individual contract, the person in whose name the contract is
13 issued.

14 "Uncovered expenditures" means the costs to the dental
15 insurer for dental care services that are the obligation of the
16 dental insurer, for which an enrollee may also be liable in the
17 event of the dental insurer's insolvency, and for which no
18 alternative arrangements have been made that are acceptable to
19 the commissioner. Uncovered expenditures shall not include
20 expenditures for services when a provider has agreed not to bill
21 the enrollee even though the provider is not paid by the dental
22 insurer, or for services that are guaranteed, insured, or



1 assumed by a person or organization other than the dental
2 insurer.

3 § -2 Establishment of a dental insurer; certificate of
4 authority. (a) Any person may apply to the commissioner for a
5 certificate of authority to establish and operate a dental
6 insurer in compliance with this chapter and chapter 423. No
7 person shall establish or operate a dental insurer in this State
8 without meeting the requirements of chapter 423 and obtaining a
9 certificate of authority under this chapter. A foreign
10 corporation may qualify under this chapter, subject to its
11 registration to do business in this State in compliance with all
12 provisions of this chapter and other applicable state laws,
13 including chapter 423.

14 (b) Any dental service corporation formed and operating
15 pursuant to chapter 423 as of July 1, 2013, shall submit an
16 application for a certificate of authority under subsection (c)
17 within ninety days of July 1, 2013. The applicant may continue
18 to operate until the commissioner acts upon the application. In
19 the event that an application made pursuant to this subsection
20 is denied, the applicant shall thereafter be treated as a dental
21 service corporation whose charter of incorporation has been
22 revoked.



1 (c) Each application for a certificate of authority shall
2 be verified by an officer or authorized representative of the
3 applicant, shall be in a form prescribed by the commissioner,
4 and shall set forth or be accompanied by the following:

- 5 (1) A copy of the organizational documents of the
6 applicant, such as the articles of incorporation,
7 articles of association, partnership agreement, trust
8 agreement, or other applicable documents, and all
9 amendments thereto;
- 10 (2) A copy of the bylaws, rules and regulations, or
11 similar document, if any, regulating the conduct of
12 the internal affairs of the applicant;
- 13 (3) A list of the names, addresses, official positions,
14 and biographical information on forms acceptable to
15 the commissioner of the persons who are to be
16 responsible for the conduct of the affairs and day-to-
17 day operations of the applicant, including all members
18 of the board of directors, board of trustees,
19 executive committee or other governing board or
20 committee, and the principal officers in the case of a
21 corporation, or the partners or members in the case of
22 a partnership or association;



- 1 (4) A copy of any contract form made or to be made between
2 any class of providers and the applicant and a copy of
3 any contract made or to be made between third party
4 administrators, marketing consultants, or persons
5 listed in paragraph (3) and the applicant;
- 6 (5) A copy of the form of evidence of coverage to be
7 issued to the enrollees;
- 8 (6) A copy of the form of group contract, if any, which is
9 to be issued to employers, unions, trustees, or other
10 organizations;
- 11 (7) Financial statements showing the applicant's assets,
12 liabilities, and sources of financial support, and
13 both a copy of the applicant's most recent audited
14 financial statement and an unaudited current financial
15 statement;
- 16 (8) A financial feasibility plan which includes detailed
17 enrollment projections, the methodology for
18 determining premium rates to be charged during the
19 first twelve months of operations certified by an
20 actuary or other qualified person, a projection of
21 balance sheets, cash flow statements showing any
22 capital expenditures, purchase and sale of



1 investments, deposits with the State, income and
2 expense statements anticipated from the start of
3 operations until the organization has had net income
4 for at least one year, and a statement as to the
5 sources of working capital as well as any other
6 sources of funding;

7 (9) A power of attorney duly executed by the applicant, if
8 not domiciled in this State, appointing the
9 commissioner and the commissioner's successors in
10 office, and duly authorized deputies, as the true and
11 lawful attorney of the applicant in and for this State
12 upon whom all lawful process in any legal action or
13 proceeding against the applicant on a cause of action
14 arising in this State may be served;

15 (10) A statement or map reasonably describing the
16 geographic area or areas to be served;

17 (11) A description of the internal grievance procedures to
18 be utilized for the investigation and resolution of
19 enrollee complaints and grievances;

20 (12) A description of the proposed quality assurance
21 program, including the formal organizational
22 structure, methods for developing criteria, procedures



1 for comprehensive evaluation of the quality of care
2 rendered to enrollees, and processes to initiate
3 corrective action and reevaluation when deficiencies
4 in provider or organizational performance are
5 identified;

6 (13) A description of the procedures to be implemented to
7 meet the protection against insolvency requirements in
8 section -6;

9 (14) A list of the names, addresses, and license numbers of
10 all providers or groups of providers with which the
11 applicant has agreements; and

12 (15) Such other information as the commissioner may
13 require.

14 (d) If the commissioner finds that the applicant has met
15 the requirements for and is fully entitled thereto under the
16 applicable insurance laws, the commissioner shall issue an
17 appropriate certificate of authority to the applicant. If the
18 commissioner does not so find, the commissioner shall deny the
19 applicant the certificate of authority within a reasonable
20 length of time following filing of the completed application by
21 the applicant. A certificate of authority shall be denied only



1 after the commissioner complies with the requirements of section
2 -13.

3 (e) The commissioner may adopt rules under chapter 91 for
4 the implementation and administration of this chapter.

5 § -3 Fiduciary responsibilities. (a) Any director,
6 officer, employee, or partner of a dental insurer who receives,
7 collects, disburses, or invests funds in connection with the
8 activities of an organization shall be responsible for the funds
9 in a fiduciary relationship to the organization.

10 (b) A dental insurer shall maintain in force a fidelity
11 bond or fidelity insurance on employees, officers, directors,
12 and partners subject to subsection (a) in an amount not less
13 than \$250,000 for each dental insurer or a maximum of \$5,000,000
14 in aggregate maintained on behalf of dental insurers owned by a
15 common parent corporation, or a sum as may be prescribed by the
16 commissioner.

17 § -4 Annual reports. (a) Each dental insurer shall
18 file with the commissioner:

- 19 (1) An audit, by an independent certified public
20 accountant or an accounting firm designated by the
21 dental insurer of the financial statements, reporting
22 the financial condition and results of operations of



1 the dental insurer, annually on or before June 1, or a
2 later date as the commissioner upon request or for
3 cause may specify. The dental insurer, on an annual
4 basis and prior to the commencement of the audit,
5 shall notify the commissioner in writing of the name
6 and address of the person or firm retained to conduct
7 the annual audit. The commissioner may disapprove the
8 dental insurer's designation within fifteen days of
9 receipt of the dental insurer's notice, and the dental
10 insurer shall be required to designate another
11 independent certified public accountant or accounting
12 firm;

13 (2) A list of the providers who have executed a contract
14 that complies with section -6(d), annually on or
15 before March 1; and

16 (3) A description of the available grievance procedures,
17 the total number of grievances handled through those
18 procedures, a compilation of the causes underlying
19 those grievances, and a summary of the final
20 disposition of those grievances, annually on or before
21 March 1.



1 (b) The commissioner may require additional reports as are
2 deemed necessary and appropriate to enable the commissioner to
3 carry out the commissioner's duties under this chapter.

4 (c) Any dental insurer failing or refusing to submit any
5 of the documents required under this section shall be liable for
6 a penalty in an amount not less than \$100 and not more than \$500
7 for each day of delinquency. Penalties collected pursuant to
8 this section shall be deposited into the compliance resolution
9 fund.

10 § -5 Information to subscribers. (a) The dental
11 insurer shall provide to its subscribers a list of providers and
12 participating providers, upon enrollment and reenrollment.

13 (b) Every dental insurer shall provide to its subscribers
14 notice of any material change in the operation of the
15 organization that will affect them directly within thirty days
16 of the material change.

17 (c) The dental insurer shall provide to subscribers
18 information on how dental care services may be obtained, where
19 additional information on access to dental care services may be
20 obtained, a description of the internal grievance procedures,
21 and a telephone number for a subscriber to contact the dental
22 insurer at no cost to the subscriber.



1 (d) For the purpose of this section, "material change"
2 means any major change in provider or participating provider
3 agreements.

4 § -6 Protection against insolvency; net solvency report.

5 (a) Net worth requirements are as follows:

6 (1) Before issuing any certificate of authority, the
7 commissioner shall require that the dental insurer has
8 an initial net worth of \$2,000,000 and shall
9 thereafter maintain the minimum net worth required
10 under paragraph (2);

11 (2) Except as provided in paragraphs (3) and (4), every
12 dental insurer shall maintain a minimum net worth
13 equal to the greater of:

14 (A) \$2,000,000;

15 (B) Two per cent of annual premium revenues as
16 reported on the most recent annual financial
17 statement filed with the commissioner on the
18 first \$150,000,000 of premium revenues and one
19 per cent of annual premium revenues on the
20 premium revenues in excess of \$150,000,000;

21 (C) An amount equal to the sum of three months
22 uncovered dental care expenditures as reported on



- 1 the most recent financial statement filed with
- 2 the commissioner; or
- 3 (D) An amount equal to eight per cent of annual
- 4 dental care expenditures except those paid on a
- 5 capitated basis as reported on the most recent
- 6 financial statement filed with the commissioner;
- 7 (3) The minimum net worth requirement set forth in
- 8 paragraph (2)(A) shall be phased in as follows:
- 9 (A) Seventy-five per cent of the required amount by
- 10 January 1, 2016; and
- 11 (B) One hundred per cent of the required amount by
- 12 December 31, 2017; and
- 13 (4) The following shall apply in determining compliance
- 14 with the requirements of this subsection:
- 15 (A) In determining net worth, no debt shall be
- 16 considered fully subordinated unless the
- 17 subordination clause is in a form acceptable to
- 18 the commissioner. Any interest obligation
- 19 relating to the repayment of any subordinated
- 20 debt shall be similarly subordinated;



1 (B) The interest expenses relating to the repayment
2 of any fully subordinated debt shall be
3 considered covered expenses; and

4 (C) Any debt incurred by a note meeting the
5 requirements of this section, and otherwise
6 acceptable to the commissioner, shall not be
7 considered a liability and shall be recorded as
8 equity.

9 (b) Deposit requirements are as follows:

10 (1) Unless otherwise provided in this subsection, each
11 dental insurer shall deposit with the commissioner or,
12 at the discretion of the commissioner, with any
13 organization or trustee acceptable to the commissioner
14 through which a custodial or controlled account is
15 utilized, cash, securities, or any combination of
16 these or other measures that are acceptable to the
17 commissioner which at all times shall have a value of
18 not less than \$300,000;

19 (2) A dental service corporation formed and operating
20 pursuant to chapter 423 that is in operation on July
21 1, 2013, shall make a deposit equal to \$150,000.

22 Within one year after January 1, 2014, a dental



1 service corporation originally formed pursuant to
2 chapter 423 that is reconstituted under this chapter
3 and in operation on January 1, 2014, shall make an
4 additional deposit of \$150,000 for a total of
5 \$300,000;

6 (3) Deposits shall be an asset of the dental insurer in
7 the determination of net worth;

8 (4) All income from deposits shall be an asset of the
9 dental insurer. A dental insurer that has made a
10 securities deposit may withdraw that deposit or any
11 part thereof after making a substitute deposit of
12 cash, securities, or any combination of these or other
13 measures of equal amount and value. Any securities
14 shall be approved by the commissioner before being
15 deposited or substituted;

16 (5) The deposit shall be used to protect the interests of
17 the dental insurer's enrollees and to assure
18 continuation of dental care services to enrollees of a
19 dental insurer which is in rehabilitation or
20 conservation. The commissioner may use the deposit
21 for administrative costs directly attributable to a
22 receivership or liquidation. If the dental insurer is



1 placed in receivership or liquidation, the deposit
2 shall be an asset subject to the provisions of article
3 15 of chapter 431; and

4 (6) The commissioner may reduce or eliminate the deposit
5 requirement if the dental insurer deposits with the
6 director of finance of this State, or the
7 commissioner, or other official body of the state or
8 jurisdiction of domicile of such dental insurer, for
9 the protection of all subscribers and enrollees,
10 wherever located, cash, acceptable securities, or
11 surety, and delivers to the commissioner a certificate
12 to such effect, duly authenticated by the appropriate
13 state official holding the deposit.

14 (c) Every dental insurer, when determining liabilities,
15 shall include an amount estimated in the aggregate to provide
16 for any unearned premium and for the payment of all claims for
17 dental care expenditures which have been incurred, whether
18 reported or unreported, which are unpaid and for which the
19 organization is or may be liable, and to provide for the expense
20 of adjustment or settlement of claims. These liabilities shall
21 be computed in accordance with rules adopted by the commissioner



1 upon reasonable consideration of the ascertained experience and
2 character of the dental insurer.

3 (d) Every contract between a dental insurer and a
4 participating provider shall be in writing and shall set forth
5 that in the event the dental insurer fails to pay for dental
6 care services as set forth in the contract, the subscriber or
7 enrollee shall not be liable to the provider for any sums owed
8 by the dental insurer. In the event that a contract with a
9 participating provider has not been reduced to writing as
10 required by this subsection or that a contract fails to contain
11 the required prohibition, the participating provider shall not
12 collect or attempt to collect from the subscriber or enrollee
13 sums owed by the dental insurer. No participating provider, or
14 agent, trustee, or assignee thereof, may maintain any action at
15 law against a subscriber or enrollee to collect sums owed by the
16 dental insurer.

17 (e) The commissioner shall require that each dental
18 insurer have a plan for handling insolvency which allows for
19 continuation of benefits for the duration of the contract period
20 for which premiums have been paid. In considering such a plan,
21 the commissioner may require:



- 1 (1) Insurance to cover the expenses to be paid for
2 continued benefits after an insolvency;
- 3 (2) Provisions in participating provider contracts that
4 obligate the provider to provide dental care services
5 for the duration of the period after the dental
6 insurer's insolvency for which premium payment has
7 been made;
- 8 (3) Insolvency reserves;
- 9 (4) Acceptable letters of credit; or
- 10 (5) Any other arrangements acceptable to the commissioner
11 to assure that benefits are continued as specified in
12 this subsection.
- 13 (f) An agreement to provide dental care services between a
14 participating provider and a dental insurer shall require that a
15 participating provider shall give the dental insurer at least
16 sixty days' advance notice in the event of termination.
- 17 (g) Each dental insurer shall prepare for review by the
18 commissioner on or before the forty-fifth day of each quarter, a
19 copy of its quarterly net solvency report verified by at least
20 two principal officers. The commissioner may prescribe the
21 forms on which the reports are to be prepared. Every dental



1 insurer shall maintain a copy of its current net solvency report
2 on the premises of its primary place of business.

3 (h) The commissioner may order an examination, subject to
4 article 2 of chapter 431, to determine whether a dental insurer
5 is in compliance with this section. Any dental insurer that
6 fails or refuses to prepare or produce for review the quarterly
7 net solvency report or any of the documents as required by this
8 section shall be liable for a penalty pursuant to section

9 -4(c).

10 § -7 Uncovered expenditures insolvency deposit. (a)
11 If, at any time, uncovered expenditures exceed ten per cent of
12 total dental care expenditures, a dental insurer shall place
13 with the commissioner or with any organization or trustee
14 acceptable to the commissioner through which a custodial or
15 controlled account is maintained, an uncovered expenditures
16 insolvency deposit consisting of cash or securities that are
17 acceptable to the commissioner. Such deposit shall have, at all
18 times, a fair market value in an amount of one-hundred-twenty
19 per cent of the dental insurer's outstanding liability for
20 uncovered expenditures for enrollees in this State, including
21 incurred but not reported claims, and shall be calculated as of
22 the first day of the month and maintained for the remainder of



1 the month. If a dental insurer is not otherwise required to
2 file a quarterly report, it shall file a report within forty-
3 five days of the end of the calendar quarter with information
4 sufficient to demonstrate compliance with this section.

5 (b) The deposit required under this section is in addition
6 to the deposit required under section -6 and is an asset of
7 the dental insurer in the determination of net worth. All
8 income from the deposits or trust accounts subject to this
9 section shall be an asset of the dental insurer and may be
10 withdrawn from the deposit or trust account quarterly with the
11 approval of the commissioner.

12 (c) A dental insurer that has made a deposit may withdraw
13 that deposit or any part of the deposit if:

- 14 (1) A substitute deposit of cash or securities of equal
15 amount and value is made;
- 16 (2) The fair market value exceeds the amount of the
17 required deposit; or
- 18 (3) The required deposit under subsection (a) is reduced
19 or eliminated.

20 Deposits, substitutions, or withdrawals may be made only with
21 the prior written approval of the commissioner.



1 (d) The deposit required under this section shall be held
2 in trust and shall be used only as provided in this section.
3 The commissioner may use the deposit of an insolvent dental
4 insurer for administrative costs associated with administering
5 the deposit and payment of claims of enrollees of this State for
6 uncovered expenditures in this State. Claims for uncovered
7 expenditures shall be paid on a pro rata basis based on assets
8 available to pay such ultimate liability for incurred
9 expenditures. Partial distribution may be made pending final
10 distribution. Any amount of the deposit remaining shall be paid
11 into the liquidation or receivership of the dental insurer.

12 (e) The commissioner may prescribe the time, manner, and
13 form for filing claims under subsection (d).

14 (f) The commissioner may require dental insurers to file
15 annual, quarterly, or more frequent reports as the commissioner
16 deems necessary to demonstrate compliance with this section.
17 The commissioner may require that the reports include liability
18 for uncovered expenditures as well as an audit opinion.

19 § -8 Reserve credit for reinsurance. Any dental insurer
20 that takes credit for reserves on risks ceded to a reinsurer
21 shall be subject to provisions of article 4A of chapter 431.



1 § -9 Replacement coverage. (a) Any carrier providing
2 replacement coverage with respect to group dental benefits
3 within a period of sixty days from the date of discontinuance of
4 a prior dental insurer contract or policy providing such dental
5 benefits shall immediately cover all enrollees who were validly
6 covered under the previous dental insurer contract or policy at
7 the date of discontinuance and who would otherwise be eligible
8 for coverage under the succeeding carrier's contract, regardless
9 of any provisions of the contract relating to active employment.

10 (b) Except to the extent benefits for the condition would
11 have been reduced or excluded under the prior carrier's contract
12 or policy, no provision in a succeeding carrier's contract of
13 replacement coverage which would operate to reduce or exclude
14 benefits on the basis that the condition giving rise to a claim
15 for benefits preexisted the effective date of the succeeding
16 carrier's contract shall be applied with respect to those
17 enrollees validly covered under the prior carrier's contract or
18 policy on the date of discontinuance.

19 § -10 Powers of insurers and hospital and medical
20 service corporations. (a) An insurance company licensed in
21 this State, or a hospital or medical service corporation
22 authorized to do business in this State, either directly or



1 through a subsidiary or affiliate, may organize and operate a
2 dental insurer under the provisions of this chapter.
3 Notwithstanding any other law to the contrary, any two or more
4 insurance companies, hospital or medical service corporations,
5 dental insurers, or subsidiaries or affiliates thereof, may
6 jointly organize and operate a dental insurer. The business of
7 insurance is deemed to include the providing of dental care
8 services by a dental insurer owned or operated by an insurer or
9 a subsidiary thereof.

10 (b) Notwithstanding any contrary provision of laws
11 pertaining to insurance or hospital or medical service
12 corporations under chapter 431, 432, or 432D, an insurer or a
13 hospital or medical service corporation may contract with a
14 dental insurer to provide insurance or similar protection
15 against the cost of dental care services provided through dental
16 insurers and to provide coverage in the event of the failure of
17 the dental insurer to meet its obligations. The enrollees of a
18 dental insurer constitute a group permitted under chapter 431,
19 432, or 432D. Among other things, under such contracts, the
20 insurer or hospital or medical service corporation may make
21 benefit payments to dental insurers for dental care services
22 rendered by providers.



1 § -11 **Examinations.** (a) The commissioner may examine
2 the affairs of any dental insurer or of any providers with whom
3 a dental insurer has contracts, agreements, or other
4 arrangements as often as is reasonably necessary for the
5 protection of the interests of the people of this State.

6 (b) Every dental insurer and provider shall submit its
7 books and records for examination and in every way facilitate
8 the completion of an examination by the commissioner. In the
9 event a dental insurer or a provider fails to comply with the
10 directions of the commissioner, the commissioner may examine the
11 affiliates of the dental insurer or provider to obtain the
12 information. For the purpose of examinations, the commissioner
13 may administer oaths to and examine the officers and agents of
14 the dental insurer and the principals of providers concerning
15 their business.

16 (c) The cost of examinations under this section shall be
17 assessed against the dental insurer or provider being examined
18 and shall be remitted to the commissioner for deposit into the
19 compliance resolution fund.

20 (d) In lieu of the commissioner's own examination, the
21 commissioner may accept the report of an examination made by the
22 commissioner or the appropriate official of another state.



1 § -12 Fees. (a) The commissioner shall collect the
2 following fees:

- 3 (1) For filing an application for a certificate of
4 authority or amendment thereto, \$600; and
5 (2) For all services subsequent to the issuance of a
6 certificate of authority, including extension of the
7 certificate of authority, \$400.

8 (b) No certificate of authority shall contain an
9 expiration date, but all certificates of authority shall be
10 extended from time to time in order to continue to be valid.
11 When the commissioner issues or extends a certificate of
12 authority, the commissioner shall determine the date prior to
13 which the certificate of authority is next required to be
14 extended, the extension date, and shall so notify the insurer
15 holding the certificate of authority in writing. If the fee for
16 extension is not paid before or on the extension date, a penalty
17 shall be imposed in the amount of fifty per cent of the fee. If
18 the fee and the penalty are not paid within thirty days
19 immediately following the extension date, the commissioner may
20 suspend the certificate of authority and shall not reinstate the
21 certificate of authority until the fee and penalty have been
22 paid.



1 (c) All fees and penalties collected pursuant to this
2 section shall be deposited into the compliance resolution fund.

3 § -13 Suspension, revocation, or denial of certificate
4 of authority. (a) The commissioner may suspend, revoke, or
5 refuse to extend any certificate of authority issued under this
6 chapter and may deny any application for a certificate of
7 authority if the commissioner finds that:

8 (1) The dental insurer is operating significantly in
9 contravention of its basic organizational document or
10 in a manner contrary to that described in any other
11 information submitted under section -2, unless
12 amendments to such submissions have been filed with
13 and approved by the commissioner;

14 (2) The dental insurer or applicant does not provide or
15 arrange for basic dental care services;

16 (3) The dental insurer or applicant is no longer
17 financially responsible and may reasonably be expected
18 to be unable to meet its obligations to enrollees or
19 prospective enrollees;

20 (4) The dental insurer has failed to correct, within the
21 time prescribed by subsection (b), any deficiency



- 1 occurring due to the impairment of the dental
- 2 insurer's prescribed minimum net worth;
- 3 (5) The dental insurer, applicant, or any person acting on
- 4 its behalf has advertised or merchandised its services
- 5 in an untrue, misrepresentative, misleading,
- 6 deceptive, or unfair manner;
- 7 (6) The dental insurer, applicant, or any person acting on
- 8 its behalf fails or refuses to produce or submit any
- 9 of the documents required under sections -4 and
- 10 -6;
- 11 (7) The operation or continued operation of the dental
- 12 insurer would be hazardous to its enrollees; or
- 13 (8) The dental insurer or applicant has otherwise failed
- 14 to substantially comply with this chapter.
- 15 (b) The following shall pertain when insufficient net
- 16 worth is maintained:
- 17 (1) Whenever the commissioner finds that the net worth
- 18 maintained by any dental insurer subject to this
- 19 chapter is less than the minimum net worth required,
- 20 the commissioner shall give written notice to the
- 21 dental insurer of the amount of the deficiency and
- 22 shall require the dental insurer to:

- 1 (A) File with the commissioner a plan for correction
- 2 of the deficiency acceptable to the commissioner;
- 3 and
- 4 (B) Correct the deficiency within a reasonable time,
- 5 not to exceed sixty days, unless an extension of
- 6 time, not to exceed sixty additional days, is
- 7 granted by the commissioner. A deficiency in net
- 8 worth shall be deemed an impairment. Failure to
- 9 correct an impairment within the prescribed time
- 10 shall be grounds for suspension or revocation of
- 11 the certificate of authority or for placing the
- 12 dental insurer in conservation, rehabilitation,
- 13 or liquidation; and
- 14 (2) Unless allowed by the commissioner, no dental insurer
- 15 or person acting on its behalf, directly or
- 16 indirectly, may renew, issue, or deliver any
- 17 certificate, agreement, or contract of coverage in
- 18 this State, for which a premium is charged or
- 19 collected, while the dental insurer is impaired and
- 20 the fact of the impairment is known to the dental
- 21 insurer or person. The existence of an impairment
- 22 shall not prevent the issuance or renewal of a



1 certificate, agreement, or contract if an enrollee
2 exercises an option granted under the plan to obtain
3 new, renewed, or converted coverage.

4 (c) A certificate of authority shall be suspended,
5 revoked, or not extended, or an application for a certificate of
6 authority denied, or an administrative fine imposed, only after
7 compliance with the following requirements:

8 (1) Suspension or revocation of a certificate of
9 authority, refusal to extend a certificate of
10 authority, denial of an application, or imposition of
11 an administrative fine pursuant to section -15(a)
12 shall be by written order of the commissioner, which
13 shall be sent to the dental insurer or applicant by
14 certified or registered mail. The written order shall
15 state the grounds, charges, or conduct on which
16 suspension, revocation, refusal to extend, denial, or
17 administrative fine is based. The insurer or
18 applicant may request in writing a hearing pursuant to
19 section 431:2-308; and

20 (2) If the dental insurer or applicant requests a hearing
21 pursuant to this section, the commissioner shall issue
22 a written notice of hearing stating a specific time



1 for the hearing, which may not be less than twenty nor
2 more than thirty days after mailing of the notice of
3 hearing and a specific place for the hearing. Notice
4 of hearing shall be delivered to the insurer or
5 applicant by certified or registered mail.

6 (d) When the certificate of authority of a dental insurer
7 is suspended, the dental insurer shall not, during the period of
8 suspension, enroll any additional enrollees except newborn
9 children or other newly acquired dependents of existing
10 subscribers, and shall not engage in any advertising or
11 solicitation whatsoever.

12 (e) When the certificate of authority of a dental insurer
13 is revoked, the insurer, immediately following the effective
14 date of the order of revocation, shall proceed to wind up its
15 affairs, and shall conduct no further business except as may be
16 essential to the orderly conclusion of the affairs of the
17 insurer. It shall engage in no further advertising or
18 solicitation whatsoever. The commissioner, by written order,
19 may permit any further operation of the insurer as the
20 commissioner may find to be in the best interest of enrollees,
21 to the end that enrollees will be afforded the greatest
22 practical opportunity to obtain continuing dental care coverage.



1 § -14 Summary orders and supervision. (a) Whenever the
2 commissioner determines that the financial condition of any
3 dental insurer is such that its continued operation might be
4 hazardous to its enrollees, creditors, or the general public, or
5 that it has violated any provision of this chapter, the
6 commissioner, after notice and hearing, may order the dental
7 insurer to take such action as may be reasonably necessary to
8 rectify such condition or violation, including but not limited
9 to:

- 10 (1) Reducing the total amount of present and potential
11 liability for benefits by reinsurance or other method
12 acceptable to the commissioner;
- 13 (2) Reducing the volume of new business being accepted;
- 14 (3) Reducing expenses by specified methods;
- 15 (4) Suspending or limiting the writing of new business for
16 a period of time;
- 17 (5) Increasing the dental insurer's capital and surplus by
18 contribution; or
- 19 (6) Taking any other steps as the commissioner may deem
20 appropriate under the circumstances.



1 (b) For purposes of this section, the violation by a
2 dental insurer of any law of this State to which the dental
3 insurer is subject shall be deemed a violation of this chapter.

4 (c) The commissioner is authorized to set uniform
5 standards and criteria for early warning that the continued
6 operation of any dental insurer might be hazardous to its
7 enrollees, creditors, or the general public, and to set
8 standards for evaluating the financial condition of any dental
9 insurer, which standards shall be consistent with the purposes
10 expressed in subsection (a).

11 (d) The remedies and measures available to the
12 commissioner under this section shall be in addition to, and not
13 in lieu of, the remedies and measures available to the
14 commissioner under the provisions of article 15 of chapter 431.

15 § -15 Administrative fines and enforcement. (a) The
16 commissioner, in addition to or in lieu of suspension or
17 revocation of a certificate of authority pursuant to section
18 -13, may levy an administrative fine upon a dental insurer in
19 an amount not less than \$500 and not more than \$50,000. The
20 dental insurer may request, in writing, a hearing pursuant to
21 section -13. The order levying the fine shall specify the
22 period within which the fine shall be fully paid, which shall



1 not be less than thirty nor more than forty-five days from the
2 date of the order. Upon failure to pay the fine when due, the
3 commissioner shall revoke the insurer's certificate of authority
4 if not already revoked, and the fine shall be recovered in a
5 civil action brought on behalf of the commissioner. Any fine so
6 collected shall be remitted by the commissioner to the director
7 of finance and shall be placed to the credit of the compliance
8 resolution fund.

9 (b) If the commissioner, for any reason, has cause to
10 believe that any violation of this chapter has occurred or is
11 threatened, the commissioner may give notice to a dental insurer
12 and its representatives, or other persons who appear to be
13 involved in such suspected violation, to arrange a conference
14 with the alleged violators or their authorized representatives
15 for the purpose of attempting to ascertain the facts relating to
16 any suspected violation. In the event it appears that any
17 violation has occurred or is threatened, the commissioner may
18 attempt to arrive at an adequate and effective means of
19 correcting or preventing the violation. Proceedings under this
20 subsection shall not be governed by any formal procedural
21 requirements and may be conducted in such manner as the
22 commissioner may deem appropriate under the circumstances.



1 However, unless consented to by the dental insurer, no order may
2 result from a conference until the requirements of this section
3 are satisfied.

4 (c) The commissioner may issue an order directing a dental
5 insurer or a representative of a dental insurer to cease and
6 desist from engaging in any act or practice in violation of the
7 provisions of this chapter. Any person aggrieved by an order of
8 the commissioner under this section may obtain judicial review
9 of the order in the manner provided for by chapter 91.

10 (d) In the case of any violation of the provisions of this
11 chapter, if the commissioner elects not to issue a cease and
12 desist order, or in the event of noncompliance with a cease and
13 desist order issued pursuant to subsection (c), the commissioner
14 may institute a proceeding to obtain injunctive or other
15 appropriate relief in any court of competent jurisdiction.

16 § -16 Statutory construction and relationship to other
17 laws. (a) Except as provided in subsection (c) and otherwise
18 provided in this chapter, the insurance laws shall not apply to
19 the activities authorized and regulated under this chapter of
20 any dental insurer granted a certificate of authority under this
21 chapter.



1 (b) Solicitation of enrollees by a dental insurer granted
2 a certificate of authority, or its representatives, shall not be
3 construed to violate any provision of law relating to
4 solicitation or advertising by providers.

5 (c) Articles 2, 2D, 13, and 15 of chapter 431, and the
6 powers granted by those provisions to the commissioner shall
7 apply to dental insurers, so long as the application in any
8 particular case is in compliance with and is not preempted by
9 applicable federal statutes and regulations.

10 § -17 Acquisition of control of or merger of a dental
11 insurer. No person may make a tender for or a request or
12 invitation for tenders of, enter into an agreement to exchange
13 securities for, or acquire in the open market or otherwise, any
14 voting security of a dental insurer or enter into any other
15 agreement if, after the consummation thereof, that person,
16 directly or indirectly, or by conversion or by exercise of any
17 right to acquire, would be in control of the dental insurer, and
18 no person may enter into an agreement to merge or consolidate
19 with or otherwise to acquire control of a dental insurer,
20 unless, at the time any offer, request, or invitation is made or
21 any agreement is entered into, or prior to the acquisition of
22 the securities if no offer or agreement is involved, the person



1 has filed with the commissioner and has sent to the dental
2 insurer information required by section 431:11-104 and the
3 offer, request, invitation, agreement, or acquisition has been
4 approved by the commissioner. Approval by the commissioner
5 shall be governed by section 431:11-104(d); provided that if no
6 action is taken by the commissioner within thirty days, the
7 offer, request, invitation, agreement, or acquisition shall be
8 deemed approved.

9 **§ -18 Federally funded programs; exemption.**

10 Requirements provided in this chapter relating to mandated
11 coverages or essential health benefits shall not be applicable
12 to any dental insurer offering dental insurance under a
13 federally funded program under the Social Security Act, as
14 amended; provided that this exemption shall apply only to that
15 part of the dental insurer's business under the federally funded
16 program.

17 **§ -19 Coordination of benefits.** (a) Dental insurers
18 are required to adopt provisions for coordination of benefits to
19 avoid overinsurance and to provide for the orderly payment of
20 claims when a person is covered by two or more group health
21 insurance or health care plans.



1 (b) Provisions adopted pursuant to subsection (a) for the
2 coordination of benefits shall be consistent with the
3 coordination of benefits provisions that are in general use in
4 the State for coordinating coverage between two or more group
5 health insurance or health care plans.

6 § -20 Disclosure of dental care coverage and benefits.

7 In order to ensure that all individuals understand their dental
8 care options and are able to make informed decisions, all dental
9 insurers shall provide current and prospective subscribers with
10 written disclosure of coverages and benefits, including
11 information on coverage principles and any exclusions or
12 restrictions on coverage.

13 The information provided shall be current, understandable,
14 and available prior to enrollment, and upon request after
15 enrollment. A policy or contract provided to a subscriber which
16 describes coverages and benefits shall be in conformance with
17 part I of article 10 of chapter 431.

18 § -21 Federal law compliance. All dental insurers shall
19 comply with applicable federal law. The commissioner shall
20 enforce the consumer protections and market reforms relating to
21 insurance as set forth in the federal Patient Protection and
22 Affordable Care Act, Public Law 111-148."



1 SECTION 2. This Act shall take effect on July 1, 2013.

APPROVED this 25 day of JUN, 2013

A handwritten signature in black ink, appearing to read "Neil Abernethy". The signature is written in a cursive style with a large initial "N".

GOVERNOR OF THE STATE OF HAWAII