
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 definition, 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 "Enrollee" means an individual who is covered by a dental
11 insurer.

12 "Evidence of coverage" means a statement of the essential
13 features and services of the dental insurer coverage that is
14 given to the subscriber by the dental insurer or by the group
15 contract holder.

16 "Grievance" means a written complaint submitted in
17 accordance with the dental insurer's formal grievance procedure
18 by or on behalf of the enrollee regarding any aspect of the
19 dental insurer relative to the enrollee.

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



1 "Group contract holder" means the person to which a group
2 contract has been issued.

3 "Individual contract" means a contract for dental care
4 services issued to and covering an individual. The individual
5 contract may include dependents of the subscriber.

6 "Insolvent" or "insolvency" means that the dental insurer
7 has been declared insolvent and placed under an order of
8 supervision, rehabilitation, or liquidation by a court of
9 competent jurisdiction.

10 "Net worth" means the excess of total assets over total
11 liabilities, but the liabilities shall not include fully
12 subordinated debt.

13 "Participating provider" means a provider as defined in
14 this section, who, under an express or implied contract with the
15 dental insurer or with its contractor or subcontractor, has
16 agreed to provide dental care services to enrollees with an
17 expectation of receiving payment, other than copayment or
18 deductible, directly or indirectly from the dental insurer.

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

20 "Provider" means any person licensed to practice dentistry
21 as defined in section 448-1 or otherwise authorized to furnish
22 dental care services.



1 "Replacement coverage" means the benefits provided by a
2 succeeding carrier.

3 "Subscriber" means an individual whose employment or other
4 status, except family dependency, is the basis for eligibility
5 for enrollment in the dental insurer, or in the case of an
6 individual contract, the person in whose name the contract is
7 issued.

8 "Uncovered expenditures" means the costs to the dental
9 insurer for dental care services that are the obligation of the
10 dental insurer, for which an enrollee may also be liable in the
11 event of the dental insurer's insolvency, and for which no
12 alternative arrangements have been made that are acceptable to
13 the commissioner. Uncovered expenditures may include but are
14 not limited to out-of-network services not covered by a policy,
15 endorsement, or contract; referral services; and dental care
16 services which are not the obligation of the dental insurer.
17 Uncovered expenditures shall not include expenditures for
18 services when a provider has agreed not to bill the enrollee
19 even though the provider is not paid by the dental insurer, or
20 for services that are guaranteed, insured, or assumed by a
21 person or organization other than the dental insurer.



1 § -2 **Establishment of a dental insurer.** (a) Any person
2 may apply to the commissioner for a certificate of authority to
3 establish and operate a dental insurer in compliance with this
4 chapter and chapter 423. No person shall establish or operate
5 as a dental insurer in this State without meeting the
6 requirements of chapter 423 and obtaining a certificate of
7 authority under this chapter. A foreign corporation may qualify
8 under this chapter, subject to its registration to do business
9 in this State in compliance with all provisions of this chapter
10 and other applicable state laws, including chapter 423.

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

20 (c) Each application for a certificate of authority shall
21 be verified by an officer or authorized representative of the



1 applicant, shall be in a form prescribed by the commissioner,
2 and shall set forth or be accompanied by the following:

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



1 copy of any contract made or to be made between third
2 party administrators, marketing consultants, or
3 persons listed in paragraph (3) and the dental
4 insurer;

5 (5) A copy of the form of evidence of coverage to be
6 issued to the enrollees;

7 (6) A copy of the form of group contract, if any, which is
8 to be issued to employers, unions, trustees, or other
9 organizations;

10 (7) Financial statements showing the applicant's assets,
11 liabilities, and sources of financial support, and
12 both a copy of the applicant's most recent audited
13 financial statement and an unaudited current financial
14 statement;

15 (8) A financial feasibility plan which includes detailed
16 enrollment projections, the methodology for
17 determining premium rates to be charged during the
18 first twelve months of operations certified by an
19 actuary or other qualified person, a projection of
20 balance sheets, cash flow statements showing any
21 capital expenditures, purchase and sale of
22 investments, deposits with the State, income and



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

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

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

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

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



1 rendered to enrollees, and processes to initiate
2 corrective action and reevaluation when deficiencies
3 in provider or organizational performance are
4 identified;

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

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

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

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

22 -13.



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

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

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

14 § -4 **Annual and quarterly reports.** (a) Each dental
15 insurer shall file with the commissioner:

16 (1) An audit, by an independent certified public
17 accountant or an accounting firm designated by the
18 dental insurer of the financial statements, reporting
19 the financial condition and results of operations of
20 the dental insurer, annually on or before June 1, or a
21 later date as the commissioner upon request or for
22 cause may specify. The dental insurer, on an annual



1 basis and prior to the commencement of the audit,
2 shall notify the commissioner in writing of the name
3 and address of the person or firm retained to conduct
4 the annual audit. The commissioner may disapprove the
5 dental insurer's designation within fifteen days of
6 receipt of the dental insurer's notice, and the dental
7 insurer shall be required to designate another
8 independent certified public accountant or accounting
9 firm;

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

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

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



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

7 § -5 **Information to subscribers.** (a) The dental
8 insurer shall provide to its subscribers a list of providers and
9 participating providers, upon enrollment and reenrollment.

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

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

20 (d) For the purpose of this section, "material change"
21 means any major change in provider or participating provider
22 agreements.



1 § -6 Protection against insolvency. (a) Net worth
2 requirements are as follows:

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

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

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

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

18 (C) An amount equal to the sum of three months
19 uncovered dental care expenditures as reported on
20 the most recent financial statement filed with
21 the commissioner; or



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



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

6 (b) Deposit requirements are as follows:

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

16 (2) A dental insurer that is in operation on July 1, 2013,
17 shall make a deposit equal to \$150,000. Within one
18 year after January 1, 2014, a dental insurer that is
19 in operation on January 1, 2014, shall make an
20 additional deposit of \$150,000 for a total of
21 \$300,000;



- 1 (3) Deposits shall be an asset of the dental insurer in
2 the determination of net worth;
- 3 (4) All income from deposits shall be an asset of the
4 dental insurer. A dental insurer that has made a
5 securities deposit may withdraw that deposit or any
6 part thereof after making a substitute deposit of
7 cash, securities, or any combination of these or other
8 measures of equal amount and value. Any securities
9 shall be approved by the commissioner before being
10 deposited or substituted;
- 11 (5) The deposit shall be used to protect the interests of
12 the dental insurer's enrollees and to assure
13 continuation of dental care services to enrollees of a
14 dental insurer which is in rehabilitation or
15 conservation. The commissioner may use the deposit
16 for administrative costs directly attributable to a
17 receivership or liquidation. If the dental insurer is
18 placed in receivership or liquidation, the deposit
19 shall be an asset subject to the provisions of article
20 15 of chapter 431; and
- 21 (6) The commissioner may reduce or eliminate the deposit
22 requirement if the dental insurer deposits with the



1 director of finance of this State, or the
2 commissioner, or other official body of the state or
3 jurisdiction of domicile of such dental insurer, for
4 the protection of all subscribers and enrollees,
5 wherever located, cash, acceptable securities, or
6 surety, and delivers to the commissioner a certificate
7 to such effect, duly authenticated by the appropriate
8 state official holding the deposit.

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

19 (d) Every contract between a dental insurer and a
20 participating provider shall be in writing and shall set forth
21 that in the event the dental insurer fails to pay for dental
22 care services as set forth in the contract, the subscriber or



1 enrollee shall not be liable to the provider for any sums owed
2 by the dental insurer. In the event that a contract with a
3 participating provider has not been reduced to writing as
4 required by this subsection or that a contract fails to contain
5 the required prohibition, the participating provider shall not
6 collect or attempt to collect from the subscriber or enrollee
7 sums owed by the dental insurer. No participating provider, or
8 agent, trustee, or assignee thereof, may maintain any action at
9 law against a subscriber or enrollee to collect sums owed by the
10 dental insurer.

11 (e) The commissioner shall require that each dental
12 insurer have a plan for handling insolvency which allows for
13 continuation of benefits for the duration of the contract period
14 for which premiums have been paid. In considering such a plan,
15 the commissioner may require:

- 16 (1) Insurance to cover the expenses to be paid for
17 continued benefits after an insolvency;
- 18 (2) Provisions in participating provider contracts that
19 obligate the provider to provide dental care services
20 for the duration of the period after the dental
21 insurer's insolvency for which premium payment has
22 been made;



- 1 (3) Insolvency reserves;
- 2 (4) Acceptable letters of credit; or
- 3 (5) Any other arrangements acceptable to the commissioner
4 to assure that benefits are continued as specified
5 above.
- 6 (f) An agreement to provide dental care services between a
7 participating provider and a dental insurer shall require that a
8 participating provider shall give the dental insurer at least
9 sixty days' advance notice in the event of termination.
- 10 (g) Each dental insurer shall prepare for review by the
11 commissioner on or before the forty-fifth day of each quarter, a
12 copy of its quarterly net solvency report verified by at least
13 two principal officers. The commissioner may prescribe the
14 forms on which the reports are to be prepared. Every dental
15 insurer shall maintain a copy of its current net solvency report
16 on the premises of its primary place of business. The
17 commissioner may order an examination, subject to article 2 of
18 chapter 431, to determine whether a dental insurer is in
19 compliance with this section.
- 20 (h) Any dental insurer that fails or refuses to prepare or
21 produce for review the quarterly net solvency report or any of



1 the documents as required by this section shall be liable for a
2 penalty pursuant to section -4(c).

3 § -7 **Uncovered expenditures insolvency deposit.** (a)

4 If, at any time, uncovered expenditures exceed ten per cent of
5 total dental care expenditures, a dental insurer shall place
6 with the commissioner or with any organization or trustee
7 acceptable to the commissioner through which a custodial or
8 controlled account is maintained, an uncovered expenditures
9 insolvency deposit consisting of cash or securities that are
10 acceptable to the commissioner. Such deposit shall have, at all
11 times, a fair market value in an amount of one hundred twenty
12 per cent of the dental insurer's outstanding liability for
13 uncovered expenditures for enrollees in this State, including
14 incurred but not reported claims, and shall be calculated as of
15 the first day of the month and maintained for the remainder of
16 the month. If a dental insurer is not otherwise required to
17 file a quarterly report, it shall file a report within forty-
18 five days of the end of the calendar quarter with information
19 sufficient to demonstrate compliance with this section.

20 (b) The deposit required under this section is in addition
21 to the deposit required under section -6 and is an asset of
22 the dental insurer in the determination of net worth. All



1 income from the deposits or trust accounts shall be assets of
2 the dental insurer and may be withdrawn from the deposit or
3 trust account quarterly with the approval of the commissioner.

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

6 (1) A substitute deposit of cash or securities of equal
7 amount and value is made;

8 (2) The fair market value exceeds the amount of the
9 required deposit; or

10 (3) The required deposit under subsection (a) is reduced
11 or eliminated.

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

14 (d) The deposit required under this section is held in
15 trust and may be used only as provided in this section. The
16 commissioner may use the deposit of an insolvent dental insurer
17 for administrative costs associated with administering the
18 deposit and payment of claims of enrollees of this State for
19 uncovered expenditures in this State. Claims for uncovered
20 expenditures shall be paid on a pro rata basis based on assets
21 available to pay such ultimate liability for incurred
22 expenditures. Partial distribution may be made pending final



1 distribution. Any amount of the deposit remaining shall be paid
2 into the liquidation or receivership of the dental insurer.

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

5 (f) The commissioner may require dental insurers to file
6 annual, quarterly, or more frequent reports as the commissioner
7 deems necessary to demonstrate compliance with this section.

8 The commissioner may require that the reports include liability
9 for uncovered expenditures as well as an audit opinion.

10 § -8 **Reserve credit for reinsurance.** Any dental insurer
11 that takes credit for reserves on risks ceded to a reinsurer
12 shall be subject to provisions of article 4A of chapter 431.

13 § -9 **Replacement coverage.** (a) For purposes of this
14 chapter, "discontinuance" means the termination of the contract
15 between the group contract holder and a dental insurer due to
16 the insolvency of the dental insurer, and does not refer to the
17 termination of any agreement between any individual subscriber
18 and the dental insurer.

19 (b) Any carrier providing replacement coverage with
20 respect to group dental benefits within a period of sixty days
21 from the date of discontinuance of a prior dental insurer
22 contract or policy providing such dental benefits shall



1 immediately cover all enrollees who were validly covered under
2 the previous dental insurer contract or policy at the date of
3 discontinuance and who would otherwise be eligible for coverage
4 under the succeeding carrier's contract, regardless of any
5 provisions of the contract relating to active employment.

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

15 § -10 Powers of insurers and hospital and medical
16 service corporations. (a) An insurance company licensed in
17 this State, or a hospital or medical service corporation
18 authorized to do business in this State, either directly or
19 through a subsidiary or affiliate, may organize and operate a
20 dental insurer under the provisions of this chapter.
21 Notwithstanding any other law to the contrary, any two or more
22 insurance companies, hospital or medical service corporations,



1 dental insurers, or subsidiaries or affiliates thereof, may
2 jointly organize and operate a dental insurer. The business of
3 insurance is deemed to include the providing of dental care
4 services by a dental insurer owned or operated by an insurer or
5 a subsidiary thereof.

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

19 § -11 **Examinations.** (a) The commissioner may examine
20 the affairs of any dental insurer or of any providers with whom
21 such dental insurer has contracts, agreements, or other



1 arrangements as often as is reasonably necessary for the
2 protection of the interests of the people of this State.

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

12 (c) The cost of examinations under this section shall be
13 assessed against the dental insurer being examined and remitted
14 to the commissioner for deposit into the compliance resolution
15 fund.

16 (d) In lieu of such examination, the commissioner may
17 accept the report of an examination made by the commissioner or
18 the appropriate official of another state.

19 § -12 Fees. (a) The commissioner shall collect in
20 advance the following fees:

21 (1) For filing an application for a certificate of
22 authority or amendment thereto, \$600; and



1 (2) For all services subsequent to the issuance of a
2 certificate of authority, including extension of the
3 certificate of authority, \$400.

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

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

21 § -13 **Suspension, revocation, or denial of certificate**
22 **of authority.** (a) The commissioner may suspend, revoke, or



1 refuse to extend any certificate of authority issued under this
2 chapter and may deny any application for a certificate of
3 authority, if the commissioner finds that any of the conditions
4 listed below exist:

- 5 (1) The dental insurer is operating significantly in
6 contravention of its basic organizational document or
7 in a manner contrary to that described in any other
8 information submitted under section -2, unless
9 amendments to such submissions have been filed with
10 and approved by the commissioner;
- 11 (2) The dental insurer or applicant does not provide or
12 arrange for basic dental care services;
- 13 (3) The dental insurer or applicant is no longer
14 financially responsible and may reasonably be expected
15 to be unable to meet its obligations to enrollees or
16 prospective enrollees;
- 17 (4) The dental insurer has failed to correct, within the
18 time prescribed by subsection (b), any deficiency
19 occurring due to the dental insurer's prescribed
20 minimum net worth being impaired;
- 21 (5) The dental insurer, applicant or any person on its
22 behalf, has advertised or merchandised its services in



1 an untrue, misrepresentative, misleading, deceptive,
2 or unfair manner;

3 (6) The dental insurer, applicant or any person on its
4 behalf, fails or refuses to produce or submit any of
5 the documents required under sections -4 and -6;

6 (7) The operation or continued operation of the dental
7 insurer would be hazardous to its enrollees; or

8 (8) The dental insurer or applicant has otherwise failed
9 substantially to comply with this chapter.

10 (b) The following shall pertain when insufficient net
11 worth is maintained:

12 (1) Whenever the commissioner finds that the net worth
13 maintained by any dental insurer subject to this
14 chapter is less than the minimum net worth required,
15 the commissioner shall give written notice to the
16 dental insurer of the amount of the deficiency and
17 require the dental insurer to:

18 (A) File with the commissioner a plan for correction
19 of the deficiency acceptable to the commissioner;
20 and

21 (B) Correct the deficiency within a reasonable time,
22 not to exceed sixty days, unless an extension of



1 time, not to exceed sixty additional days, is
2 granted by the commissioner. Such a deficiency
3 shall be deemed an impairment, and failure to
4 correct the impairment in the prescribed time
5 shall be grounds for suspension or revocation of
6 the certificate of authority or for placing the
7 dental insurer in conservation, rehabilitation,
8 or liquidation; and

9 (2) Unless allowed by the commissioner, no dental insurer
10 or person acting on its behalf, directly or
11 indirectly, may renew, issue, or deliver any
12 certificate, agreement, or contract of coverage in
13 this State, for which a premium is charged or
14 collected, when the dental insurer writing the
15 coverage is impaired, and the fact of the impairment
16 is known to the dental insurer or to such person.
17 However, the existence of an impairment shall not
18 prevent the issuance or renewal of a certificate,
19 agreement, or contract when the enrollee exercises an
20 option granted under the plan to obtain a new,
21 renewed, or converted coverage.



1 (c) A certificate of authority shall be suspended, revoked
2 or not extended, or an application for a certificate of
3 authority denied, or an administrative fine imposed, only after
4 compliance with the requirements of this subsection.

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

17 (2) If the dental insurer or applicant requests a hearing
18 pursuant to this section, the commissioner shall issue
19 a written notice of hearing and send it to the dental
20 insurer or applicant by certified or registered mail
21 stating:



1 (A) A specific time for the hearing, which may not be
2 less than twenty nor more than thirty days after
3 mailing of the notice of hearing; and

4 (B) A specific place for the hearing.

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

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

- 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, the commissioner may levy an administrative fine upon
19 the dental insurer in an amount not less than \$500 and not more
20 than \$50,000. The dental insurer may request, in writing, a
21 hearing pursuant to section -13. The order levying the fine
22 shall specify the period within which the fine shall be fully

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

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



1 appropriate under the circumstances. However, unless consented
2 to by the dental insurer, no order may result from a conference
3 until the requirements of this section 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. This chapter shall not apply to an insurer or dental
22 insurer licensed and regulated pursuant to the insurance laws or



1 the dental insurer laws of this State except with respect to its
2 dental insurer activities authorized and regulated pursuant to
3 this chapter.

4 (b) Solicitation of enrollees by a dental insurer granted
5 a certificate of authority, or its representatives, shall not be
6 construed to violate any provision of law relating to
7 solicitation or advertising by health professionals.

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

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



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

12 § -18 **Federally funded programs; exemption.**

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

20 § -19 **Coordination of benefits.** (a) Dental insurers
21 are required to adopt provisions for coordination of benefits to
22 avoid overinsurance and to provide for the orderly payment of



1 claims when a person is covered by two or more group health
2 insurance or health care plans.

3 (b) If dental insurers adopt provisions for coordination
4 of benefits, the provisions must be consistent with the
5 coordination of benefits provisions that are in general use in
6 the State for coordinating coverage between two or more group
7 health insurance or health care plans.

8 § -20 **Disclosure of dental care coverage and benefits.**

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

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

20 § -21 **Federal law compliance.** All dental insurers shall
21 comply with applicable federal law. The commissioner shall
22 enforce the consumer protections and market reforms relating to



1 insurance as set forth in the federal Patient Protection and
2 Affordable Care Act, P.L. 111-148."

3 SECTION 2. This Act shall take effect on July 1, 2050.

4



Report Title:

Dental Service Corporations; Dental Insurers; Insurance

Description:

Establishes licensing and financial solvency requirements for dental insurers, including compliance with the requirements of chapter 423, Hawaii Revised Statutes, relating to dental service corporations. Effective 07/01/2050. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

