

S.B. NO. 2820

JAN 23 2014

A BILL FOR AN ACT

RELATING TO INSURANCE.

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

- 1 SECTION 1. Chapter 431, Hawaii Revised Statutes, is
2 amended by adding to article 10A a new section to be
3 appropriately designated and to read as follows:
- 4 "§431:10A- Prohibition on rescissions of coverage. (a)
5 Notwithstanding sections 431:10-226.5 and 431:10A-106 to the
6 contrary, a group health plan or health insurance insurer shall
7 not rescind coverage under a health benefit plan with respect to
8 an individual, including a group to which the individual belongs
9 or family coverage in which the individual is included, after
10 the individual is covered under the plan, unless:
- 11 (1) The individual or a person seeking coverage on behalf
12 of the individual, performs an act, practice, or
13 omission that constitutes fraud; or
- 14 (2) The individual makes an intentional misrepresentation
15 of material fact as prohibited by the terms of the
16 plan or coverage.

1 As used in this subsection, "a person seeking coverage on
2 behalf of the individual" shall not include an insurance
3 producer or employee or authorized representative of the health
4 carrier.

5 (b) A health carrier shall provide at least thirty days
6 advance written notice to each plan enrollee or, for individual
7 health insurance coverage, primary subscriber, who would be
8 affected by the proposed rescission of coverage before coverage
9 under the plan may be rescinded in accordance with subsection
10 (a) regardless of, in the case of group health insurance
11 coverage, whether the rescission applies to the entire group or
12 only to an individual within the group.

13 (c) This section applies regardless of any applicable
14 contestability period."

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

18 "§432- **Prohibition on rescissions of coverage.** (a)
19 Notwithstanding sections 431:10-226.5 and 431:10A-106 to the
20 contrary, a group health plan or health insurance insurer shall
21 not rescind coverage under a health benefit plan with respect to
22 an individual, including a group to which the individual belongs

1 or family coverage in which the individual is included, after
2 the individual is covered under the plan, unless:

3 (1) The individual or a person seeking coverage on behalf
4 of the individual, performs an act, practice, or
5 omission that constitutes fraud; or

6 (2) The individual makes an intentional misrepresentation
7 of material fact as prohibited by the terms of the
8 plan or coverage.

9 As used in this subsection, "a person seeking coverage on
10 behalf of the individual" shall not include an insurance
11 producer or employee or authorized representative of the health
12 carrier.

13 (b) A health carrier shall provide at least thirty days
14 advance written notice to each plan enrollee or, for individual
15 health insurance coverage, primary subscriber, who would be
16 affected by the proposed rescission of coverage before coverage
17 under the plan may be rescinded in accordance with subsection

18 (a) regardless of, in the case of group health insurance
19 coverage, whether the rescission applies to the entire group or
20 only to an individual within the group.

21 (c) This section applies regardless of any applicable
22 contestability period."

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

4 "§432D- Prohibition on rescissions of coverage. (a)
5 Notwithstanding sections 431:10-226.5 and 431:10A-106 to the
6 contrary, a group health plan or health insurance insurer shall
7 not rescind coverage under a health benefit plan with respect to
8 an individual, including a group to which the individual belongs
9 or family coverage in which the individual is included, after
10 the individual is covered under the plan, unless:

- 11 (1) The individual or a person seeking coverage on behalf
12 of the individual, performs an act, practice, or
13 omission that constitutes fraud; or
- 14 (2) The individual makes an intentional misrepresentation
15 of material fact as prohibited by the terms of the
16 plan or coverage.

17 As used in this subsection, "a person seeking coverage on
18 behalf of the individual" shall not include an insurance
19 producer or employee or authorized representative of the health
20 carrier.

21 (b) A health carrier shall provide at least thirty days
22 advance written notice to each plan enrollee or, for individual

1 health insurance coverage, primary subscriber, who would be
2 affected by the proposed rescission of coverage before coverage
3 under the plan may be rescinded in accordance with subsection
4 (a) regardless of, in the case of group health insurance
5 coverage, whether the rescission applies to the entire group or
6 only to an individual within the group.

7 (c) This section applies regardless of any applicable
8 contestability period."

9 SECTION 4. Section 431:1-209, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§431:1-209 General casualty insurance defined.** General
12 casualty insurance includes vehicle insurance as defined in
13 section 431:1-208 [7] and accident and health or sickness
14 insurance as defined in section 431:1-205, [~~and in addition is~~
15 ~~insurance:~~] when issued as an incidental coverage with or
16 supplemental to liability insurance. In addition, general
17 casualty insurance is insurance:

18 (1) Against legal liability for the death, injury, or
19 disability of any human being, or from damage to
20 property;

21 (2) Of medical, hospital, surgical, and funeral benefits
22 to persons injured, irrespective of legal liability of

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- 1 the insured, when issued with or supplemental to
2 insurance against legal liability for the death,
3 injury, or disability of human beings;
- 4 (3) Of the obligation accepted by, imposed upon, or
5 assumed by employers under law for death, disablement,
6 or injury to employees;
- 7 (4) Against loss or damage by burglary, theft, larceny,
8 robbery, forgery, fraud, vandalism, malicious
9 mischief, confiscation, or wrongful conversion,
10 disposal, or concealment, or from any attempt of any
11 of the foregoing; also insurance against loss or
12 damage to moneys, coins, bullion, securities, notes,
13 drafts, acceptances, or any other valuable papers or
14 documents, resulting from any cause, except while in
15 the mail;
- 16 (5) Upon personal effects of individuals, by an all-risk
17 type of policy commonly known as the personal property
18 floater;
- 19 (6) Against loss or damage to glass and its appurtenances
20 resulting from any cause;

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- 1 (7) Against any liability and loss or damage to property
2 resulting from accidents to or explosions of boilers,
3 pipes, pressure containers, machinery, or apparatus;
- 4 (8) Against loss of or damage to any property of the
5 insured resulting from the ownership, maintenance, or
6 use of elevators, except loss or damage by fire;
- 7 (9) Against loss or damage to any property caused by the
8 breakage or leakage of sprinklers, water pipes, or
9 containers, or by water entering through leaks or
10 openings in buildings;
- 11 (10) Against loss or damage resulting from failure of
12 debtors to pay their obligations to the insured
13 (credit insurance);
- 14 (11) Against loss of or damage to any domesticated or wild
15 animal resulting from any cause (livestock insurance);
- 16 (12) Against loss of or damage to any property of the
17 insured resulting from collision of any other object
18 with such property, but not including collision to or
19 by vessels, craft, piers, or other instrumentalities
20 of ocean or inland navigation (collision insurance);
- 21 (13) Against legal liability of the insured, and against
22 loss, damage, or expense incident to a claim of such

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1 liability, and including any obligation of the insured
2 to pay medical, hospital, surgical, and funeral
3 benefits to injured persons, irrespective of legal
4 liability of the insured, arising out of the death or
5 injury of any person, or arising out of injury to the
6 economic interest of any person as the result of
7 negligence in rendering expert, fiduciary, or
8 professional service (malpractice insurance);

9 (14) Against any contract of warranty or guaranty which
10 promises service maintenance, parts replacement,
11 repair, money, or any other indemnity in the event of
12 loss of or damage to a motor vehicle or any part
13 thereof from any cause, including loss of or damage to
14 or loss of use of the motor vehicle by reason of
15 depreciation, deterioration, wear and tear, use,
16 obsolescence, or breakage if made by a warrantor or
17 guarantor who or which as such is doing an insurance
18 business; provided that service contracts, as defined
19 and meeting the requirements of chapter 481X, shall
20 not be subject to chapter 431.

21 The doing or proposing to do any business in
22 substance equivalent to the business described in this

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1 section in a manner designed to evade the provisions
2 of this section is the doing of an insurance business;
3 and

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

9 SECTION 5. Section 431:2-209, Hawaii Revised Statutes, is
10 amended by amending subsection (d) to read as follows:

11 "(d) Three years after the [~~year to which they relate,~~]
12 date filed or within three years of the due date prescribed for
13 the filing of the tax report, whichever is later, the
14 commissioner may destroy [~~any foreign or alien insurer's~~] the
15 tax reports[~~]~~ of any foreign or alien insurers, surplus lines
16 brokers, or independently procured insureds, or similar records
17 or reports now or hereafter in the commissioner's possession."

18 SECTION 6. Section 431:2-402, Hawaii Revised Statutes, is
19 amended by amending subsection (c) to read as follows:

20 "(c) The branch may review and take appropriate action on
21 complaints [~~relating to insurance fraud.~~] of fraud relating to
22 insurance under title 24, including chapters 431, 432, and 432D,

1 but excluding workers' compensation insurance under chapter
2 386."

3 SECTION 7. Section 431:10A-102.5, Hawaii Revised Statutes,
4 is amended by amending subsection (b) to read as follows:

5 "(b) When used in sections 431:10A-104, 431:10A-105,
6 431:10A-106, 431:10A-107, 431:10A-108, 431:10A-109, 431:10A-110,
7 431:10A-111, 431:10A-112, 431:10A-113, 431:10A-114, 431:10A-117,
8 431:10A-118, 431:10A-601, 431:10A-602, 431:10A- 603, and 431:10A-
9 604, except as otherwise provided, the terms "accident
10 insurance", "accident and health or sickness insurance", "health
11 insurance", or "sickness insurance" shall include an accident-
12 only, specified disease, hospital indemnity, long-term care,
13 disability, dental, vision, medicare supplement, or other
14 limited benefit health insurance contract regardless of the
15 manner in which benefits are paid."

16 SECTION 8. Section 431:11A-101, Hawaii Revised Statutes, is
17 amended by amending the definition of "licensed insurer" or
18 "insurer" to read as follows:

19 "Licensed insurer" or "insurer" means any person, firm,
20 association, or corporation duly licensed to transact a property
21 or casualty insurance business in this State. The following are
22 not licensed insurers for the purposes of this article:

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1 ~~[(1) All risk retention groups as defined in the Superfund~~
2 ~~Amendments Reauthorization Act of 1986, P.L. No. 99-~~
3 ~~499, 100 Stat. 1613 (1986), and the Risk Retention Act,~~
4 ~~15 U.S.C. section 3901 et seq. (1982 and Supp. 1986),~~
5 ~~and chapter 431K,~~

6 ~~(2)]~~ (1) All residual market pools and joint underwriting
7 authorities or associations; and

8 ~~[(3)]~~ (2) Captive ~~[insurers]~~ insurance companies as defined in
9 section 431:19-101[-], other than risk retention
10 captive insurance companies."

11 SECTION 9. Section 431:14G-103, Hawaii Revised Statutes,
12 is amended to read as follows:

13 "~~[+]~~ §431:14G-103 ~~[+]~~ **Making of rates.** (a) Rates shall not
14 be excessive, inadequate, or unfairly discriminatory and shall
15 be reasonable in relation to the costs of the benefits provided.

16 (b) Except to the extent necessary to meet subsection (a),
17 uniformity among managed care plans in any matters within the
18 scope of this section shall be neither required nor prohibited.

19 (c) Eighty per cent of all investment income on the
20 reserves net of investment manager fees shall be applied to the
21 rate determination and filing of the managed care plan. This
22 requirement may be waived or adjusted by the commissioner if the

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1 commissioner determines it would impair the minimum reserve
2 requirements or solvency of the managed care plan."

3 SECTION 10. Section 431:19-101, Hawaii Revised Statutes,
4 is amended by amending the definition of "captive insurance
5 company" to read as follows:

6 "Captive insurance company" or "captive insurer" means a
7 class 1 company, class 2 company, class 3 company, class 4
8 company, or class 5 company formed or authorized under this
9 article."

10 SECTION 11. Section 431M-2, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§431M-2 Policy coverage.** (a) All individual and group
13 accident and health or sickness insurance policies issued in
14 this State, individual or group hospital or medical service plan
15 contracts, and nonprofit mutual benefit society, fraternal
16 benefit society, and health maintenance organization health plan
17 contracts shall include within their hospital and medical
18 coverage the benefits of alcohol dependence, drug dependence,
19 and mental [~~illness~~] health treatment services [~~provided in~~
20 ~~section 431M-4~~], except that this section shall not apply to
21 insurance policies that are issued solely for single diseases,
22 or otherwise limited, specialized coverage.

1 (b) The policies and contracts set forth in subsection (a)
2 shall not impose any financial requirements or treatment
3 limitations on mental health or substance use disorder benefits
4 that are more restrictive than the predominant financial
5 requirements and treatment limitations, either quantitative or
6 nonquantitative, imposed on medical and surgical benefits in
7 accordance with the Mental Health Parity and Addiction Equity
8 Act of 2008."

9 SECTION 12. Section 432:1-406, Hawaii Revised Statutes, is
10 amended by amending the definition of "uncovered expenditures"
11 to read as follows:

12 "'Uncovered expenditures" means the costs to the mutual
13 benefit society for health care services that are the obligation
14 of the mutual benefit society, for which a member may be liable
15 in the event of the mutual benefit society's insolvency, and for
16 which no alternative arrangements have been made that are
17 acceptable to the commissioner. Uncovered expenditures include,
18 but are not limited to, out-of-area services, referral services,
19 and hospital services. Uncovered expenditures do not include
20 expenditures for services when a provider has agreed not to bill
21 the member even though the provider is not paid by the mutual
22 benefit society, or for services that are guaranteed, insured,

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1 or assumed by a person or organization other than a mutual
2 benefit society."

3 SECTION 13. Section 432:2-102, Hawaii Revised Statutes, is
4 amended by amending subsection (b) to read as follows:

5 "(b) Nothing in this article shall exempt fraternal
6 benefit societies from the provisions and requirements of part
7 IV of article 2, part IV of article 3, and article 15 of chapter
8 431, and [~~of section 431:2-215.~~] sections 431:2-215, 431:3-303,
9 431:3-304, and 431:3-305."

10 SECTION 14. Section 432D-1, Hawaii Revised Statutes, is
11 amended by amending the definition of "uncovered expenditures"
12 to read as follows:

13 "'Uncovered expenditures" means the costs to the health
14 maintenance organization for health care services that are the
15 obligation of the health maintenance organization, for which an
16 enrollee may also be liable in the event of the health
17 maintenance organization's insolvency, and for which no
18 alternative arrangements have been made that are acceptable to
19 the commissioner. Uncovered expenditures include, but are not
20 limited to, out-of-area services, referral services, and
21 hospital services. Uncovered expenditures do not include
22 expenditures for services when a provider has agreed not to bill

1 the enrollee even though the provider is not paid by the health
2 maintenance organization, or for services that are guaranteed,
3 insured, or assumed by a person or organization other than the
4 health maintenance organization."

5 SECTION 15. Section 432D-19, Hawaii Revised Statutes, is
6 amended by amending subsection (d) to read as follows:

7 "(d) Article 2, article 2D, part IV of article 3, article
8 6, part III of article 7, article 9A, article 13, article 14G,
9 and article 15 of chapter 431, and sections 431:3-301 [~~and~~],
10 431:3-302, 431:3-303, 431:3-304, and 431:3-305, and the powers
11 granted by those provisions to the commissioner shall apply to
12 health maintenance organizations, so long as the application in
13 any particular case is in compliance with and is not preempted
14 by applicable federal statutes and regulations."

15 SECTION 16. Section 432G-1, Hawaii Revised Statutes, is
16 amended by amending the definition of "uncovered expenditures"
17 to read as follows:

18 ""Uncovered expenditures" means the costs to the dental
19 insurer for dental care services that are the obligation of the
20 dental insurer, for which an enrollee may also be liable in the
21 event of the dental insurer's insolvency, and for which no
22 alternative arrangements have been made that are acceptable to

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1 the commissioner. Uncovered expenditures include, but are not
2 limited to, out-of-area services, referral services, and
3 hospital services. Uncovered expenditures shall not include
4 expenditures for services when a provider has agreed not to bill
5 the enrollee even though the provider is not paid by the dental
6 insurer, or for services that are guaranteed, insured, or
7 assumed by a person or organization other than the dental
8 insurer."

9 SECTION 17. Sections 431M-3, 431M-4, and 431M-5, Hawaii
10 Revised Statutes, are repealed.

11 [~~"§431M-3 Peer review. (a) Covered benefits for alcohol~~
12 ~~dependence, drug dependence, or mental illness insurance~~
13 ~~policies, hospital or medical service plan contracts, and health~~
14 ~~maintenance organization health plan contracts shall be limited~~
15 ~~to those services certified by the insurance or health care plan~~
16 ~~carrier's physician, psychologist, licensed clinical social~~
17 ~~worker, marriage and family therapist, licensed mental health~~
18 ~~counselor, or advanced practice registered nurse as medically or~~
19 ~~psychologically necessary at the least restrictive appropriate~~
20 ~~level of care.~~

21 ~~(b) All alcohol dependence, drug dependence, or mental~~
22 ~~illness treatment or services as set forth in this chapter shall~~

1 ~~be subject to peer review procedures as a condition of payment~~
2 ~~or reimbursement, to assure that reimbursement is limited to~~
3 ~~appropriate utilization under criteria incorporated into~~
4 ~~insurance policies or health or service plan contracts either~~
5 ~~directly or by reference. Review may involve prior approval,~~
6 ~~concurrent review of the continuation of treatment, post-~~
7 ~~treatment review or any combination of these. However, if prior~~
8 ~~approval is required, provision shall be made to allow for~~
9 ~~payment of urgent or emergency admissions, subject to subsequent~~
10 ~~review.~~

11 ~~§431M-4 Mental illness, alcohol and drug dependence~~
12 ~~benefits. (a) The covered benefit under this chapter shall not~~
13 ~~be less than thirty days of in hospital services per year. Each~~
14 ~~day of in hospital services may be exchanged for two days of~~
15 ~~nonhospital residential services, two days of partial~~
16 ~~hospitalization services, or two days of day treatment~~
17 ~~services. Visits to a physician, psychologist, licensed~~
18 ~~clinical social worker, marriage and family therapist, licensed~~
19 ~~mental health counselor, or advanced practice registered nurse~~
20 ~~shall not be less than thirty visits per year to hospital or~~
21 ~~nonhospital facilities or to mental health outpatient facilities~~
22 ~~for day treatment or partial hospitalization services. Each day~~

1 ~~of in hospital services may also be exchanged for two outpatient~~
2 ~~visits under this chapter, provided that the patient's condition~~
3 ~~is such that the outpatient services would reasonably preclude~~
4 ~~hospitalization. The total covered benefit for outpatient~~
5 ~~services in subsections (b) and (c) shall not be less than~~
6 ~~twenty four visits per year; provided that coverage of twelve of~~
7 ~~the twenty four outpatient visits shall apply only to the~~
8 ~~services under subsection (c). The other covered benefits under~~
9 ~~this chapter shall apply to any of the services in subsection~~
10 ~~(b) or (c). In the case of alcohol and drug dependence~~
11 ~~benefits, the insurance policy may limit the number of treatment~~
12 ~~episodes but may not limit the number to less than two treatment~~
13 ~~episodes per lifetime. Nothing in this section shall be~~
14 ~~construed to limit serious mental illness benefits.~~

15 ~~(b) Alcohol and drug dependence benefits shall be as~~
16 ~~follows:~~

17 ~~(1) Detoxification services as a covered benefit under this~~
18 ~~chapter shall be provided either in a hospital or in a~~
19 ~~nonhospital facility that has a written affiliation~~
20 ~~agreement with a hospital for emergency, medical, and~~
21 ~~mental health support services. The following services~~
22 ~~shall be covered under detoxification services:~~

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1 ~~(A) Room and board;~~

2 ~~(B) Diagnostic x rays;~~

3 ~~(C) Laboratory testing; and~~

4 ~~(D) Drugs, equipment use, special therapies, and~~
5 ~~supplies.~~

6 ~~Detoxification services shall be included as part of~~
7 ~~the covered in hospital services, but shall not be~~
8 ~~included in the treatment episode limitation, as~~
9 ~~specified in subsection (a);~~

10 ~~(2) Alcohol or drug dependence treatment through in-~~
11 ~~hospital, nonhospital residential, or day treatment~~
12 ~~substance abuse services as a covered benefit under~~
13 ~~this chapter shall be provided in a hospital or~~
14 ~~nonhospital facility. Before a person qualifies to~~
15 ~~receive benefits under this subsection, a qualified~~
16 ~~physician, psychologist, licensed clinical social~~
17 ~~worker, marriage and family therapist, licensed mental~~
18 ~~health counselor, or advanced practice registered nurse~~
19 ~~shall determine that the person suffers from alcohol or~~
20 ~~drug dependence, or both; provided that the substance~~
21 ~~abuse services covered under this paragraph shall~~
22 ~~include those services that are required for licensure~~

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1 ~~and accreditation and shall be included as part of the~~
2 ~~covered in hospital services as specified in subsection~~
3 ~~(a). Excluded from alcohol or drug dependence~~
4 ~~treatment under this subsection are detoxification~~
5 ~~services and educational programs to which drinking or~~
6 ~~drugged drivers are referred by the judicial system and~~
7 ~~services performed by mutual self help groups;~~
8 ~~(3) Alcohol or drug dependence outpatient services as a~~
9 ~~covered benefit under this chapter shall be provided~~
10 ~~under an individualized treatment plan approved by a~~
11 ~~qualified physician, psychologist, licensed clinical~~
12 ~~social worker, marriage and family therapist, licensed~~
13 ~~mental health counselor, or advanced practice~~
14 ~~registered nurse and shall be services reasonably~~
15 ~~expected to produce remission of the patient's~~
16 ~~condition. An individualized treatment plan approved~~
17 ~~by a marriage and family therapist, licensed mental~~
18 ~~health counselor, licensed clinical social worker, or~~
19 ~~an advanced practice registered nurse for a patient~~
20 ~~already under the care or treatment of a physician or~~
21 ~~psychologist shall be done in consultation with the~~
22 ~~physician or psychologist. Services covered under this~~

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1 ~~paragraph shall be included as part of the covered~~
2 ~~outpatient services as specified in subsection (a); and~~
3 ~~(4) Substance abuse assessments for alcohol or drug~~
4 ~~dependence as a covered benefit under this section for~~
5 ~~a child facing disciplinary action under section 302A-~~
6 ~~1134.6 shall be provided by a qualified physician,~~
7 ~~psychologist, licensed clinical social worker, advanced~~
8 ~~practice registered nurse, or certified substance abuse~~
9 ~~counselor. The certified substance abuse counselor~~
10 ~~shall be employed by a hospital or nonhospital facility~~
11 ~~providing substance abuse services. The substance~~
12 ~~abuse assessment shall evaluate the suitability for~~
13 ~~substance abuse treatment and placement in an~~
14 ~~appropriate treatment setting.~~
15 ~~(e) Mental illness benefits.~~
16 ~~(1) Covered benefits for mental health services set forth~~
17 ~~in this subsection shall be limited to coverage for~~
18 ~~diagnosis and treatment of mental disorders. All~~
19 ~~mental health services shall be provided under an~~
20 ~~individualized treatment plan approved by a physician,~~
21 ~~psychologist, licensed clinical social worker, marriage~~
22 ~~and family therapist, licensed mental health counselor,~~

1 ~~or advanced practice registered nurse and must be~~
2 ~~reasonably expected to improve the patient's~~
3 ~~condition. An individualized treatment plan approved~~
4 ~~by a licensed clinical social worker, marriage and~~
5 ~~family therapist, licensed mental health counselor, or~~
6 ~~an advanced practice registered nurse for a patient~~
7 ~~already under the care or treatment of a physician or~~
8 ~~psychologist shall be done in consultation with the~~
9 ~~physician or psychologist;~~

10 ~~(2) In hospital and nonhospital residential mental health~~
11 ~~services as a covered benefit under this chapter shall~~
12 ~~be provided in a hospital or a nonhospital residential~~
13 ~~facility. The services to be covered shall include~~
14 ~~those services required for licensure and~~
15 ~~accreditation, and shall be included as part of the~~
16 ~~covered in hospital services as specified in subsection~~
17 ~~(a);~~

18 ~~(3) Mental health partial hospitalization as a covered~~
19 ~~benefit under this chapter shall be provided by a~~
20 ~~hospital or a mental health outpatient facility. The~~
21 ~~services to be covered under this paragraph shall~~
22 ~~include those services required for licensure and~~

1 ~~accreditation and shall be included as part of the~~
2 ~~covered in hospital services as specified in subsection~~
3 ~~(a); and~~

4 ~~(4) Mental health outpatient services shall be a covered~~
5 ~~benefit under this chapter and shall be included as~~
6 ~~part of the covered outpatient services as specified in~~
7 ~~subsection (a).~~

8 ~~§431M-5 Nondiscrimination in deductibles, copayment plans,~~
9 ~~and other limitations on payment. (a) Deductible or copayment~~
10 ~~plans may be applied to benefits paid to or on behalf of~~
11 ~~patients during the course of treatment as described in section~~
12 ~~431M 4, but in any case the proportion of deductibles or~~
13 ~~copayments shall be not greater than those applied to comparable~~
14 ~~physical illnesses generally requiring a comparable level of~~
15 ~~care in each policy.~~

16 ~~(b) Notwithstanding subsection (a), health maintenance~~
17 ~~organizations may establish reasonable provisions for enrollee~~
18 ~~cost sharing so long as the amount the enrollee is required to~~
19 ~~pay does not exceed the amount of copayment and deductible~~
20 ~~customarily required by insurance policies which are subject to~~
21 ~~the provisions of this chapter for this type and level of~~
22 ~~service. Nothing in this chapter prevents health maintenance~~

1 ~~organizations from establishing durational limits which are~~
2 ~~actuarially equivalent to the benefits required by this~~
3 ~~chapter. Health maintenance organizations may limit the receipt~~
4 ~~of covered services by enrollees to services provided by or upon~~
5 ~~referral by providers associated with the health maintenance~~
6 ~~organization.~~

7 ~~(c) A health insurance plan shall not impose rates, terms,~~
8 ~~or conditions including service limits and financial~~
9 ~~requirements, on serious mental illness benefits, if similar~~
10 ~~rates, terms, or conditions are not applied to services for~~
11 ~~other medical or surgical conditions. This chapter shall not~~
12 ~~apply to individual contracts, provided further that this~~
13 ~~chapter shall not apply to QUEST medical plans under the~~
14 ~~department of human services until July 1, 2002."]~~

15 SECTION 18. Sections 431M-6 and 431M-7, Hawaii Revised
16 Statutes, are repealed.

17 [~~§431M-6 Rules. The insurance commissioner, after~~
18 ~~consultation with all interested parties including the director~~
19 ~~of health, the Hawaii medical board, the board of psychology,~~
20 ~~and representatives of insurance carriers, nonprofit mutual~~
21 ~~benefit societies, health maintenance organizations, public and~~
22 ~~private providers, consumers, employers, and labor organizations~~

1 ~~shall adopt rules pursuant to chapter 91 as are deemed necessary~~
2 ~~for the effective implementation and operation of this chapter.~~
3 ~~The rules shall include criteria and guidelines to be used in~~
4 ~~determining the appropriateness and medical or psychological~~
5 ~~necessity of services covered under this chapter, including the~~
6 ~~appropriate level of care or place of treatment and the number~~
7 ~~or quantity of services, and the objective and quantifiable~~
8 ~~criteria for determining when a health maintenance organization~~
9 ~~meets the conditions and requirements of section 431M 5, and~~
10 ~~shall include an appeals process.~~

11 ~~The director of health shall also adopt rules pursuant to~~
12 ~~chapter 91 as are deemed necessary for the implementation and~~
13 ~~operation of this chapter. The rules shall provide~~
14 ~~certification standards that:~~

15 ~~(1) Reflect quality of care; and~~

16 ~~(2) Do not compromise the quality of care.~~

17 ~~[\$431M 7] Preservation of certain benefits. Nothing in~~
18 ~~this chapter shall serve to prevent the offering or acceptance~~
19 ~~of benefits required by this chapter."]~~

20 SECTION 19. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.

S.B. NO. 2820

1 SECTION 20. This Act, upon its approval, shall take effect
2 on July 1, 2014.

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INTRODUCED BY: 

BY REQUEST

S.B. NO. 2820

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Report Title:

Insurance

Description:

Updates title 24 of the Hawaii Revised Statutes, relating to insurance.

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

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO INSURANCE.

PURPOSE: To update title 24 of the Hawaii Revised Statutes (HRS), relating to insurance, by:

- (1) Adding new sections to article 10A of chapter 431, chapter 432, and chapter 432D, HRS, to prohibit rescission of coverage under a health benefit plan in most circumstances and provide notice to conform with the federal Patient Protection and Affordable Care Act ("PPACA");
- (2) Amending section 431:1-209, HRS, to clarify that companies with general casualty insurance authority can only write accident and health or sickness insurance as incidental or supplemental coverage;
- (3) Amending section 431:2-209(d), HRS, to clarify retention requirements for tax records for foreign and alien insurers, surplus lines brokers, and independently procured insureds;
- (4) Amending section 431:2-402(c), HRS, to allow the Insurance Fraud Investigations Branch to review and take appropriate action on complaints of fraud relating to insurance under title 24, including chapters 431, 432, and 432D, HRS, but excluding workers' compensation under chapter 386, HRS;
- (5) Amending section 431:10A-102.5(b), HRS, to include long-term care insurance as part of limited benefit health insurance;
- (6) Amending the definition of "licensed insurer" or "insurer" in section

- 431:11A-101, HRS, to include risk retention captive insurance companies;
- (7) Amending section 431:14G-103, HRS, to require that 80 percent of all investment income on the reserves net of investment manager fees be applied to rate determination and filing of a managed care plan;
 - (8) Amending the definition of "captive insurance company" in section 431:19-101, HRS, to include "captive insurer";
 - (9) Amending section 431M-2, HRS, to conform with PPACA, which mandates parity between medical and surgical benefits and benefits for alcohol dependency, drug dependence, and mental health treatment services, which is a Hawaii designated essential health treatment;
 - (10) Amending the definition of "uncovered expenditures" to include out-of-area services, referral services, and hospital services in sections 432:1-406, 432D-1, and 432G-1, HRS, relative to mutual benefit societies, health maintenance organizations, and dental insurers;
 - (11) Amending sections 432:2-102(b) and 432D-19(d), HRS, to apply sections 431:3-303, 431:3-304, and 431:3-305, HRS, to fraternal benefit societies and health maintenance organizations;
 - (12) Repealing sections 431M-3, 431M-4, 431M-5, 431M-6, and 431M-7, HRS, to conform with PPACA; and
 - (13) Making technical, nonsubstantive amendments for purposes of clarity and consistency.

MEANS: Add a new section to article 10A of chapter 431, chapter 432, and chapter 432D, HRS; amend sections 431:1-209, 431:2-209(d), 431:2-402(c), 431:10A-102.5(b), 431:11A-101, 431:14G-103, 431:19-101, 431M-2, 432:1-406, 432:2-102(b), 432D-1, 432D-19(d), and 432G-1, HRS; and repeal sections 431M-3, 431M-4, 431M-5, 431M-6, and 431M-7, HRS.

JUSTIFICATION: The following changes conform Hawaii law to the PPACA:

- (1) PPACA prohibits the rescission of coverage under a health benefit plan with respect to an individual or member of a group, after the individual is covered unless the individual (or representative) performs an act of fraud or makes an intentional misrepresentation of material fact. In addition, PPACA requires that a health carrier provide at least 30 days advance written notice to a plan enrollee or primary subscriber before coverage may be rescinded under the allowed circumstances. The proposal adds new sections to the laws governing health insurers, mutual benefit societies, and health maintenance organizations to conform Hawaii law to federal law under the PPACA;
- (2) PPACA mandates parity between medical and surgical benefits and benefits for alcohol dependency, drug dependence, and mental health treatment services. The amendment to section 431M-2, HRS, and repeal of sections 431M-3, 431M-4, 431M-5, 431M-6, and 431M-7, HRS, seek to conform Hawaii law to federal law under PPACA.

Under existing law, it is possible for an insurer with a general casualty license, but not an accident and health or sickness insurance license, to write a stand-alone comprehensive medical policy under the

current definition of general casualty insurance. This proposed amendment to section 431:1-209, HRS, clarifies that companies with general casualty insurance authority can only write accident and health or sickness insurance as incidental or supplemental coverage.

A comprehensive major medical policy, if offered by a general casualty insurer, would not be subject to the same policy provisions and mandated benefits as other health insurers. Given that there is an employer mandate and an individual mandate for health insurance, this is a loophole that should be closed. In addition, amending the definition of general casualty insurance would make Hawaii consistent with other states in defining general casualty insurance and how it is treated.

Under section 431:2-209(d), HRS, the Insurance Division keeps tax reports for surplus line brokers and independently procured insureds indefinitely because the tax reports for these types of entities are not specifically addressed like foreign or alien insurers. The administrative use for surplus line brokers and independently procured insureds is similar to foreign and alien insurers. This proposal would provide relief relative to the administrative and archival burden of indefinitely keeping the tax records of surplus line brokers and independently procured insureds.

Section 431:2-402(c), HRS, currently limits the Insurance Fraud Investigations Branch from investigating and prosecuting any complaints of fraud committed by insurance producers. The proposed changes clarify that the Insurance Fraud Investigations Branch has the authority to prosecute all complaints of fraud regulated by the Insurance Division, including but not limited to, fraud committed by insurance producers. This proposal will help

consumers and insurers who have complaints of fraud committed by insurance producers.

Existing law dealing with limited benefit health insurance does not include long-term care insurance. Therefore, long-term care insurance may not be subject to the standard policy provisions in article 10A, chapter 431. Under existing law, it is possible that a long-term care insurer may refuse to comply with the standard policy provisions. Although long-term care insurers have been following the standard policy provisions in article 10A, the proposed change to section 431:10A-102.5(b), HRS, would help to avoid any confusion in the future.

The accreditation standards of the National Association of Insurance Commissioners ("NAIC") require that the "Business Transacted with Producer Controlled Property/Casualty Insurer" law, as found in article 11A, chapter 431, HRS ("article 11A"), should apply to risk retention captive insurance companies. Currently, all risk retention groups are excluded from the definition of "licensed insurer" or "insurer" under article 11A. The proposed amendment to section 431:11A-101, HRS, ensures that Hawaii meets NAIC accreditation standards by clarifying that risk retention captive insurance companies will be subject to article 11A.

Amending section 431:14G-103 would provide that all investment income on the reserves of a managed care plan net of investment manager fees would be applied to the rate determination unless the Insurance Commissioner (the "Commissioner") determines it would impair the minimum reserve requirement or solvency of the managed care plan. This amendment restores the law as it existed prior to July 1, 2006, pursuant to Act 74, Session Laws of Hawaii 2002, and should result in lower premiums.

The terms "captive insurer" and "captive insurance company" are used interchangeably throughout the HRS. The proposed amendment to section 431:19-101, HRS, provides greater clarity and consistency in referring to these terms in the HRS.

The proposed changes to sections 432:1-406, 432D-1, and 432G-1, HRS, clarify the definition of "uncovered expenditures" for mutual benefit societies, health maintenance organizations, and dental insurers. The proposed changes reflect recommendations in the NAIC Health Maintenance Organization Model Act to clarify that this term may include out-of-area services, referral services, and hospital services.

Sections 431:3-303 (immunity), 431:3-304 (confidentiality), and 431:3-305 (accounts and records), HRS, would apply to sections 432:2-102(b) and 432D-19(d), HRS, for fraternal benefit societies and health maintenance organizations. These provisions are currently applicable only to mutual benefit societies pursuant to section 432:1-102, HRS. The proposed changes would make the applicable HRS sections consistent among similar insurance entities.

In summary, the above amendments represent efforts to streamline operations, improve administrative efficiency, contribute to the Insurance Division retaining NAIC accreditation, conform to PPACA, and reduce the cost of insurance regulation.

Impact on the public: This bill will make provisions of title 24 of the HRS more understandable, technically correct, and consistent, and decrease the cost and burden of regulatory compliance.

Impact on the department and other agencies: These amendments streamline operations, improve administrative efficiency, contribute to the Insurance Division

retaining NAIC accreditation, and reduce confusion and inefficiency in implementing Hawaii's insurance laws.

GENERAL FUND: None.

OTHER FUNDS: Compliance resolution fund.

PPBS PROGRAM
DESIGNATION: CCA 106.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: July 1, 2014.