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# 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;

14           (2) The individual makes an intentional misrepresentation  
15           of material fact as prohibited by the terms of the  
16           plan or coverage; or

17           (3) The individual fails to timely pay required premiums  
18           or contributions toward the cost of coverage; provided



1           that if a qualified health plan elects to rescind  
2           coverage based on nonpayment of premiums or  
3           contributions:

4           (A) The qualified health plan shall establish a  
5           standard policy for termination of coverage of  
6           enrollees or subscribers due to nonpayment; and

7           (B) The standard policy shall include a grace period  
8           for recipients of advance payments of the premium  
9           tax credit; provided further that:

10           (i) The grace period shall be applied uniformly  
11           to enrollees or subscribers in similar  
12           circumstances; and

13           (ii) The advance premium tax credit may involve a  
14           three month grace period.

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

19           (b) A health carrier shall provide at least thirty days  
20           advance written notice to each plan enrollee or, for individual  
21           health insurance coverage, to each primary subscriber, who would  
22           be affected by the proposed rescission of coverage before



1 coverage under the plan may be rescinded in accordance with  
2 subsection (a) regardless of, in the case of group health  
3 insurance coverage, whether the rescission applies to the entire  
4 group or only to an individual within the group.

5 (c) This section applies regardless of any applicable  
6 contestability period."

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

10 **"§432- Prohibition on rescissions of coverage. (a)**  
11 Notwithstanding sections 431:10-226.5 and 431:10A-106 to the  
12 contrary, a group health plan or health insurance insurer shall  
13 not rescind coverage under a health benefit plan with respect to  
14 an individual, including a group to which the individual belongs  
15 or family coverage in which the individual is included, after  
16 the individual is covered under the plan, unless:

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

20 (2) The individual makes an intentional misrepresentation  
21 of material fact as prohibited by the terms of the  
22 plan or coverage; or



1       (3) The individual fails to timely pay required premiums  
2       or contributions toward the cost of coverage; provided  
3       that if a qualified health plan elects to rescind  
4       coverage based on nonpayment of premiums or  
5       contributions:

6       (A) The qualified health plan shall establish a  
7       standard policy for termination of coverage of  
8       enrollees or subscribers due to nonpayment; and

9       (B) The standard policy shall include a grace period  
10       for recipients of advance payments of the premium  
11       tax credit; provided further that:

12       (i) The grace period shall be applied uniformly  
13       to enrollees or subscribers in similar  
14       circumstances; and

15       (ii) The advance premium tax credit may involve a  
16       three month grace period.

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

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

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

12 **"§432D- Prohibition on rescissions of coverage. (a)**  
13 Notwithstanding sections 431:10-226.5 and 431:10A-106 to the  
14 contrary, a group health plan or health insurance insurer shall  
15 not rescind coverage under a health benefit plan with respect to  
16 an individual, including a group to which the individual belongs  
17 or family coverage in which the individual is included, after  
18 the individual is covered under the plan, unless:

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



1       (2) The individual makes an intentional misrepresentation  
2       of material fact as prohibited by the terms of the  
3       plan or coverage; or

4       (3) The individual fails to timely pay required premiums  
5       or contributions toward the cost of coverage; provided  
6       that if a qualified health plan elects to rescind  
7       coverage based on nonpayment of premiums or  
8       contributions:

9       (A) The qualified health plan shall establish a  
10       standard policy for termination of coverage of  
11       enrollees or subscribers due to nonpayment; and

12       (B) The standard policy shall include a grace period  
13       for recipients of advance payments of the premium  
14       tax credit; provided further that:

15       (i) The grace period shall be applied uniformly  
16       to enrollees or subscribers in similar  
17       circumstances; and

18       (ii) The advance premium tax credit may involve a  
19       three month grace period.

20       As used in this subsection, "a person seeking coverage on  
21       behalf of the individual" shall not include an insurance



1 producer or employee or authorized representative of the health  
2 carrier.

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

11 (c) This section applies regardless of any applicable  
12 contestability period."

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

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



- 1           (1) Against legal liability for the death, injury, or  
2           disability of any human being, or from damage to  
3           property;
- 4           (2) Of medical, hospital, surgical, and funeral benefits  
5           to persons injured, irrespective of legal liability of  
6           the insured, when issued with or supplemental to  
7           insurance against legal liability for the death,  
8           injury, or disability of human beings;
- 9           (3) Of the obligation accepted by, imposed upon, or  
10          assumed by employers under law for death, disablement,  
11          or injury to employees;
- 12          (4) Against loss or damage by burglary, theft, larceny,  
13          robbery, forgery, fraud, vandalism, malicious  
14          mischief, confiscation, or wrongful conversion,  
15          disposal, or concealment, or from any attempt of any  
16          of the foregoing; also insurance against loss or  
17          damage to moneys, coins, bullion, securities, notes,  
18          drafts, acceptances, or any other valuable papers or  
19          documents, resulting from any cause, except while in  
20          the mail;



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



1 with such property, but not including collision to or  
2 by vessels, craft, piers, or other instrumentalities  
3 of ocean or inland navigation (collision insurance);  
4 (13) Against legal liability of the insured, and against  
5 loss, damage, or expense incident to a claim of such  
6 liability, and including any obligation of the insured  
7 to pay medical, hospital, surgical, and funeral  
8 benefits to injured persons, irrespective of legal  
9 liability of the insured, arising out of the death or  
10 injury of any person, or arising out of injury to the  
11 economic interest of any person as the result of  
12 negligence in rendering expert, fiduciary, or  
13 professional service (malpractice insurance);  
14 (14) Against any contract of warranty or guaranty which  
15 promises service maintenance, parts replacement,  
16 repair, money, or any other indemnity in the event of  
17 loss of or damage to a motor vehicle or any part  
18 thereof from any cause, including loss of or damage to  
19 or loss of use of the motor vehicle by reason of  
20 depreciation, deterioration, wear and tear, use,  
21 obsolescence, or breakage if made by a warrantor or  
22 guarantor who or which as such is doing an insurance



1 business; provided that service contracts, as defined  
2 and meeting the requirements of chapter 481X, shall  
3 not be subject to chapter 431.

4 The doing or proposing to do any business in  
5 substance equivalent to the business described in this  
6 section in a manner designed to evade the provisions  
7 of this section is the doing of an insurance business;  
8 and

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

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

16 "(d) Three years after the [~~year to which they relate,~~]  
17 date filed or within three years of the due date prescribed for  
18 the filing of the tax report, whichever is later, the  
19 commissioner may destroy [~~any foreign or alien insurer's~~] the  
20 tax reports[~~7~~] of any foreign or alien insurers, surplus lines  
21 brokers, or independently procured insureds, or similar records  
22 or reports now or hereafter in the commissioner's possession."



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

3 "(c) The branch may review and take appropriate action on  
4 complaints [~~relating to insurance fraud.~~] of fraud relating to  
5 insurance under title 24, including chapters 431, 432, and 432D,  
6 but excluding workers' compensation insurance under chapter  
7 386."

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

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



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

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

8 ~~[-(1) All risk retention groups as defined in the Superfund~~  
9 ~~Amendments Reauthorization Act of 1986, P.L. No. 99-~~  
10 ~~499, 100 Stat. 1613 (1986), and the Risk Retention~~  
11 ~~Act, 15 U.S.C. section 3901 et seq. (1982 and Supp.~~  
12 ~~1986), and chapter 431K,~~

13 ~~-(2)]~~ (1) All residual market pools and joint underwriting  
14 authorities or associations; and

15 ~~[-(3)]~~ (2) Captive ~~[insurers]~~ insurance companies as defined  
16 in section 431:19-101~~[-]~~, other than risk retention  
17 captive insurance companies."

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

20 "[+]§431:14G-103[+] **Making of rates.** (a) Rates shall not  
21 be excessive, inadequate, or unfairly discriminatory and shall  
22 be reasonable in relation to the costs of the benefits provided.



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

4 (c) Eighty per cent of all investment income on the  
5 reserves net of investment manager fees shall be applied to the  
6 rate determination and filing of the managed care plan. This  
7 requirement may be waived or adjusted by the commissioner if the  
8 commissioner determines it would impair the minimum reserve  
9 requirements or solvency of the managed care plan."

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

13 "Captive insurance company" or "captive insurer" means a  
14 class 1 company, class 2 company, class 3 company, class 4  
15 company, or class 5 company formed or authorized under this  
16 article."

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

19 "**§431M-2 Policy coverage.** (a) All individual and group  
20 accident and health or sickness insurance policies issued in  
21 this State, individual or group hospital or medical service plan  
22 contracts, and nonprofit mutual benefit society, fraternal



1 benefit society, and health maintenance organization health plan  
2 contracts shall include within their hospital and medical  
3 coverage the benefits of alcohol dependence, drug dependence,  
4 and mental [~~illness~~] health treatment services [~~provided in~~  
5 ~~section 431M-4~~], except that this section shall not apply to  
6 insurance policies that are issued solely for single diseases,  
7 or otherwise limited, specialized coverage.

8 (b) The policies and contracts set forth in subsection (a)  
9 shall not impose any financial requirements or treatment  
10 limitations on mental health or substance use disorder benefits  
11 that are more restrictive than the predominant financial  
12 requirements and treatment limitations, either quantitative or  
13 nonquantitative, imposed on medical and surgical benefits in  
14 accordance with the Mental Health Parity and Addiction Equity  
15 Act of 2008."

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

19 "Uncovered expenditures" means the costs to the mutual  
20 benefit society for health care services that are the obligation  
21 of the mutual benefit society, for which a member may be liable  
22 in the event of the mutual benefit society's insolvency, and for



1 which no alternative arrangements have been made that are  
2 acceptable to the commissioner. Uncovered expenditures include  
3 but are not limited to out-of-area services, referral services,  
4 and hospital services. Uncovered expenditures do not include  
5 expenditures for services when a provider has agreed not to bill  
6 the member even though the provider is not paid by the mutual  
7 benefit society, or for services that are guaranteed, insured,  
8 or assumed by a person or organization other than a mutual  
9 benefit society."

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

12 "(b) Nothing in this article shall exempt fraternal  
13 benefit societies from the provisions and requirements of part  
14 IV of article 2, part IV of article 3, and article 15 of chapter  
15 431, and [~~of section 431:2-215.~~] sections 431:2-215, 431:3-303,  
16 431:3-304, and 431:3-305."

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

20 "'Uncovered expenditures" means the costs to the health  
21 maintenance organization for health care services that are the  
22 obligation of the health maintenance organization, for which an





1 enrollee may also be liable in the event of the health  
2 maintenance organization's insolvency, and for which no  
3 alternative arrangements have been made that are acceptable to  
4 the commissioner. Uncovered expenditures include but are not  
5 limited to out-of-area services, referral services, and hospital  
6 services. Uncovered expenditures do not include expenditures  
7 for services when a provider has agreed not to bill the enrollee  
8 even though the provider is not paid by the health maintenance  
9 organization, or for services that are guaranteed, insured, or  
10 assumed by a person or organization other than the health  
11 maintenance organization."

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

14 "(d) Article 2, article 2D, part IV of article 3, article  
15 6, part III of article 7, article 9A, article 13, article 14G,  
16 and article 15 of chapter 431, and sections 431:3-301 [~~and~~],  
17 431:3-302, 431:3-303, 431:3-304, and 431:3-305, and the powers  
18 granted by those provisions to the commissioner shall apply to  
19 health maintenance organizations, so long as the application in  
20 any particular case is in compliance with and is not preempted  
21 by applicable federal statutes and regulations."



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

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

16 SECTION 17. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18 SECTION 18. This Act, upon its approval, shall take effect  
19 on July 1, 2014.



**Report Title:**

Insurance; Rescission of Coverage; Health Benefit Plans; General Casualty Insurance; Tax Records; Insurance Fraud Investigations; Long-term Care Insurance; Captive Insurance; Reserves

**Description:**

Prohibits rescission of coverage under health benefit plans in most circumstances; requires written notice prior to rescission. Clarifies a requirement with regard to companies with general casualty insurance authority. Clarifies retention requirements for tax records for surplus line brokers and independently procured insureds. Allows the insurance fraud investigations branch to take appropriate action in certain instances. Includes long-term care insurance as part of limited benefit health insurance. Amends definitions relating to captive insurance companies. Specifies certain rate making requirements for managed care plans. Makes other amendments to conform to National Association of Insurance Commissioners model laws and the federal Patient Protection and Affordable Care Act. (SD1)

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

