
A BILL FOR AN ACT

RELATING TO HEALTH INSURANCE.

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

1 SECTION 1. The legislature finds that the Patient
2 Protection and Affordable Care Act of 2010 (Affordable Care Act)
3 has resulted in an estimated 20,000,000 Americans gaining health
4 insurance coverage. The provisions under the Affordable Care
5 Act that have afforded coverage to the uninsured include the
6 medicaid expansion, health insurance marketplace coverage, and
7 changes in private insurance that permit young adults to remain
8 on their parent's health insurance plans and require health
9 insurance plans to cover people with preexisting health
10 conditions. According to a report from the United States
11 Department of Health and Human Services, 6,100,000 uninsured
12 young adults ages nineteen to twenty-five have gained health
13 insurance coverage thanks to the Affordable Care Act. This is
14 especially important as young adults were particularly likely to
15 be uninsured before the law went into effect.

16 The federal Department of Health and Human Services
17 recently reported that since the enactment of the Affordable



1 Care Act, 54,000 residents of Hawaii have gained health
2 insurance coverage. In addition to residents who would
3 otherwise be uninsured, hundreds of thousands of Hawaii
4 residents with employer, medicaid, individual market, or
5 medicare coverage have also benefited from new protections under
6 the Affordable Care Act. Even with the robust coverage of
7 Hawaii's Prepaid Health Care Act, the benefits of the Affordable
8 Care Act in Hawaii have been widespread. The Act expanded
9 medicaid eligibility and strengthened the program for those
10 already eligible. The State has saved millions in uncompensated
11 care costs and has been able to improve behavioral health
12 outcomes for various beneficiaries. For Hawaii residents,
13 individual market coverage is now dramatically better than
14 before the enactment of the Affordable Care Act.

15 Unfortunately, the future of the Affordable Care Act is now
16 uncertain. The current presidential administration campaigned
17 on the promise to repeal the Affordable Care Act. Republicans
18 in Congress have also backed the Executive Branch's promise to
19 repeal and replace the Affordable Care Act. On January 12,
20 2017, Senate Republicans took their first major step toward
21 repealing the Affordable Care Act, when they approved a budget



1 blueprint that would allow Republicans to gut the Affordable
2 Care Act without the threat of a Democratic filibuster.

3 The repeal of the Affordable Care Act will have widespread
4 ramifications. According to recent data from the Urban
5 Institute, 86,000 fewer people in Hawaii would have health
6 insurance in 2019 if the Affordable Care Act is repealed.
7 States are poised to lose significant federal funds if
8 marketplace subsidies and the medicaid expansion end. For
9 Hawaii, a repeal of the Affordable Care Act means the loss of
10 \$47,000,000 in federal marketplace spending in 2019 and a loss
11 of \$532,000,000 between 2019 and 2028. Hawaii would also lose
12 \$306,000,000 in federal medicaid funding in 2019 and
13 \$3,700,000,000 between 2019 and 2028.

14 The legislature further finds that repealing the Affordable
15 Care Act would destabilize the individual insurance market due
16 to a combination of several factors including the pending loss
17 of subsidies, elimination of the requirement to buy health
18 insurance, and the requirement that insurers sell to all
19 purchasers. Such factors will likely cause individual insurance
20 prices to rise and may cause healthier individuals to drop
21 health insurance coverage.



1 The Urban Institute estimates that repealing the Affordable
 2 Care Act without an adequate replacement plan that ensures
 3 affordable coverage would take health insurance coverage away
 4 from 29,800,000 people nationwide by 2019, more than doubling
 5 the total number of uninsured to 58,700,000.

6 As of February 2017, there is not yet a firm plan or
 7 agreement regarding the future of the Affordable Care Act.
 8 However, the Executive Branch has demanded that Congress
 9 immediately repeal and replace the Act. The legislature
 10 concludes that due to the uncertainty over the Affordable Care
 11 Act, it is important to preserve certain important aspects of
 12 the Act for residents in Hawaii.

13 Accordingly, the purpose of this Act is to ensure that
 14 certain benefits under the Affordable Care Act, which may not
 15 otherwise be available under the State's Prepaid Health Care
 16 Act, remain available under Hawaii law, including:

- 17 (1) Preserving the individual mandate that requires
- 18 taxpayers to have qualified health insurance coverage
- 19 throughout the year or pay a penalty;
- 20 (2) Ensuring all health insurers, mutual benefit
- 21 societies, and health maintenance organizations in the



- 1 State, including health benefits plans under chapter
 2 87A, Hawaii Revised Statutes, include essential health
 3 care benefits, plus additional contraception and
 4 breastfeeding coverage benefits;
- 5 (3) Extending dependent coverage for adult children until
 6 the children turn twenty-six years of age;
- 7 (4) Prohibiting health insurance entities from imposing a
 8 preexisting condition exclusion; and
- 9 (5) Prohibiting health insurance entities from using an
 10 individual's gender to determine premiums or
 11 contributions.

12 SECTION 2. Chapter 235, Hawaii Revised Statutes, is
 13 amended by adding two new sections to be appropriately
 14 designated and to read as follows:

15 "§235-A Minimum essential coverage. (a) Except as
 16 provided in subsection (g), for each month beginning after
 17 December 31, 2017, an individual shall ensure that the
 18 individual, and any dependent of the individual, is covered with
 19 minimum essential coverage for the month.

20 (b) If a taxpayer, or a dependent for whom the taxpayer is
 21 liable, fails to meet the requirement of subsection (a) for one



1 or more months, then a penalty shall be imposed on the taxpayer
2 in an amount determined pursuant to subsection (c); provided
3 that:

4 (1) Any penalty imposed by this section with respect to
5 any month shall be included with a taxpayer's return
6 under section 235-92 for the taxable year which
7 includes that month; and

8 (2) If a penalty is imposed for any month on an individual
9 and the individual:

10 (A) Is a dependent of another taxpayer for the other
11 taxpayer's taxable year, the other taxpayer shall
12 be liable for the penalty; or

13 (B) Files a joint return for the taxable year, the
14 individual and the spouse of the individual shall
15 be jointly liable for such penalty.

16 (c) The amount of the penalty imposed by this section on
17 any taxpayer for any taxable year pursuant to subsection (b)
18 shall be equal to the sum of the monthly penalty amounts
19 determined under subsection (d) for months in the taxable year
20 during which the taxpayer or the taxpayer's dependent fails to
21 meet the requirements of subsection (a).



- 1 (d) The monthly penalty amount with respect to any
2 taxpayer for any month during which any failure described
3 pursuant to subsection (b) occurred is an amount equal to one-
4 twelfth of the greater of the following amounts:
- 5 (1) A flat rate of \$695; or
6 (2) 2.5 per cent of the excess of the taxpayer's household
7 income for the taxable year over the taxpayer's
8 applicable filing threshold for the taxable year.
- 9 (e) If an individual has not attained the age of eighteen
10 as of the beginning of a month, the monthly penalty with respect
11 to such individual shall be equal to one-half of the amount
12 described in subsection (d).
- 13 (f) For every calendar year beginning after December 31,
14 2018, the amount under subsection (d)(1) shall be \$695,
15 increased by an amount equal to \$695 multiplied by the cost of
16 living adjustment determined pursuant to title 26 United States
17 Code section 1(f)(3).
- 18 (g) Any individual who is not an applicable individual as
19 defined in section 5000A(d) of the Internal Revenue Code of
20 1986, as amended, or who is exempt from penalties pursuant to
21 section 5000A(e) of the Internal Revenue Code of 1986, as



1 amended, as those provisions existed on January 1, 2017, shall
2 be exempt from the requirements imposed by subsection (a).

3 (h) For purposes of this section:

4 "Household income" means, with respect to any taxpayer for
5 any taxable year, an amount equal to the sum of the adjusted
6 gross income, as determined under this chapter, of the taxpayer
7 plus the aggregate adjusted gross income, as determined under
8 this chapter, of all individuals for whom the taxpayer is
9 allowed a deduction under section 151 (relating to allowance of
10 deduction for personal exemptions) of the Internal Revenue Code
11 of 1986, as amended, for the taxable year and who were required
12 to file a tax return under section 235-92.

13 "Minimum essential coverage" means the same as in section
14 5000A(f) of the Internal Revenue Code of 1986, as amended, and
15 title 26 Code of Federal Regulations section 1.5000A-2, as of
16 January 1, 2017.

17 **§235-B Minimum essential coverage confirmation report.**

18 (a) The director of taxation shall require every insurer that
19 issues a policy, plan, contract, or agreement that provides
20 minimum essential coverage to any individual residing in the
21 State to report the provision of coverage on a form and in a



1 manner determined by the director by rule pursuant to chapter
2 91. Coverage confirmation reports issued pursuant to this
3 section shall be provided to the director of taxation and to the
4 individual covered by the policy, plan, contract or agreement.

5 (b) Each coverage confirmation report issued pursuant to
6 this section shall contain, at minimum:

7 (1) The name, date of birth, and last four digits of the
8 social security number of each individual, including
9 all dependents, covered by the minimum essential
10 coverage;

11 (2) The policy number and start and end dates of the
12 minimum essential coverage applicable to each
13 individual named;

14 (3) The monthly premium amount paid for minimum essential
15 coverage for each individual named; and

16 (4) The premium supplementation amounts, if any, paid to
17 the insurer for providing minimal essential coverage
18 to the named individuals pursuant to part of
19 chapter 371."



1 SECTION 3. Chapter 371, Hawaii Revised Statutes, is
2 amended by adding a new part to be appropriately designated and
3 to read as follows:

4 "PART MINIMUM ESSENTIAL COVERAGE PREMIUM SUPPLEMENTATION

5 §371- Establishment of minimum essential coverage premium
6 supplementation trust fund. There is established in the
7 treasury of the State, separate and apart from all public moneys
8 or funds of the State, a trust fund for minimum essential
9 coverage premium supplementation which shall be administered
10 exclusively for the purposes of this chapter. All minimum
11 essential coverage premium supplementations payable under this
12 part shall be paid from the fund. The fund shall consist of:

- 13 (1) All money appropriated by the State for the purposes
14 of premium supplementation under this part; and
15 (2) All fines and penalties collected pursuant to section
16 235-A.

17 §371- Management of the fund. The director of finance
18 shall be the treasurer and custodian of the minimum essential
19 coverage premium supplementation fund and shall administer the
20 fund in accordance with the directions of the director of labor
21 and industrial relations. All moneys in the fund shall be held



1 in trust for the purposes of this part only and shall not be
2 expended, released, or appropriated or otherwise disposed of for
3 any other purpose. Moneys in the fund may be deposited in any
4 depositary bank in which general funds of the State may be
5 deposited but such moneys shall not be commingled with other
6 state funds and shall be maintained in separate accounts on the
7 books of the depositary bank. Such moneys shall be secured by
8 the depositary bank to the same extent and in the same manner as
9 required by the general depositary law of the State; and
10 collateral pledged for this purpose shall be kept separate and
11 distinct from any other collateral pledged to secure other funds
12 of the State. The director of finance shall be liable for the
13 performance of the director of finance's duties under this
14 section as provided in chapter 37.

15 **§371- Disbursements from the fund.** Expenditures of
16 moneys in the minimum essential coverage premium supplementation
17 fund shall not be subject to any provisions of law requiring
18 specific appropriations or other formal release by the state
19 officers of money in their custody. All payments from the fund
20 shall be made upon warrants drawn upon the director of finance



1 by the comptroller of the State supported by vouchers approved
2 by the director.

3 §371- Entitlement to premium supplementation. (a) An
4 insurer that provides minimum essential coverage pursuant to
5 section 235-A and provides minimum essential confirmation
6 reports in compliance with section 235-B shall be entitled to
7 premium supplementation from the fund if the cost to the insurer
8 of providing such coverage under any individual policy, plan,
9 contract, or agreement exceeds per cent of the total premium
10 amount paid to the insurer by the covered individual.

11 (b) The amount of the supplementation for each individual
12 minimal essential coverage policy, plan, contract, or agreement
13 shall be the amount by which the cost of providing minimal
14 essential coverage exceeds the total premium amount paid to the
15 insurer.

16 §371- Claim of premium supplementation. An insurer
17 entitled to premium supplementation under this part shall file a
18 claim therefor in the manner provided by the director by rule.
19 The insurer shall have the burden of demonstrating the insurer's
20 entitlement."



1 SECTION 4. Chapter 431, Hawaii Revised Statutes, is
2 amended by adding four new sections to article 10A to be
3 appropriately designated and to read as follows:

4 "§431:10A- Essential health care benefits. (a) Every
5 policy of accident and health or sickness insurance issued or
6 renewed in this State shall include at least the following
7 essential health care benefits:

- 8 (1) Ambulatory patient services;
- 9 (2) Emergency services;
- 10 (3) Hospitalization benefits;
- 11 (4) Pregnancy, maternity, and newborn care;
- 12 (5) Mental health and substance use disorder services,
13 including behavioral health treatment, mental and
14 behavioral health inpatient services, and substance
15 use disorder treatment;
- 16 (6) Rehabilitative services and devices;
- 17 (7) Laboratory services;
- 18 (8) Preventive and wellness services and chronic disease
19 management; and
- 20 (9) Pediatric services, excluding oral and vision care.



1 (b) Policies of accident and health or sickness insurance
2 delivered or issued for delivery in this State shall also
3 include the following additional benefits:

4 (1) Contraceptive coverage, including contraceptive
5 methods and counseling, as prescribed by a health care
6 provider; and

7 (2) Breastfeeding coverage, including breastfeeding
8 support, counseling, and equipment for the duration of
9 breastfeeding;

10 provided that a health insurer shall not impose any cost-sharing
11 requirements, including copayments, coinsurance, or deductibles,
12 on a policyholder or individual with respect to the benefits
13 covered under this subsection.

14 (c) This section shall not apply to policies that provide
15 coverage for specified diseases or other limited benefit
16 coverage, as provided pursuant to section 431:10A-102.5.

17 §431:10A- Extension of dependent coverage. A group
18 accident and health or sickness insurance policy and a health
19 insurer offering group or individual accident and health or
20 sickness insurance coverage that provide coverage of dependent
21 children shall continue to make such coverage available for an



1 adult child until the child turns twenty-six years of age.
2 Nothing in this section shall require a policy or health insurer
3 to make coverage available for a child of a child receiving
4 dependent coverage.

5 §431:10A- Prohibition of preexisting condition
6 exclusions. (a) An accident and health or sickness insurance
7 policy issued or renewed in this State shall not impose any
8 preexisting condition exclusion.

9 (b) For purposes of this section, a "preexisting condition
10 exclusion" means a limitation or exclusion of benefits,
11 including a denial of coverage, based on the fact that any
12 condition was present before the effective date of coverage, or
13 if coverage is denied the date of the denial, under a group or
14 individual accident and health or sickness insurance policy,
15 whether or not any medical advice, diagnosis, care, or treatment
16 was recommended or received before that day.

17 The term "preexisting condition exclusion" includes any
18 limitation or exclusion of benefits, including a denial of
19 coverage, applicable to an individual as a result of information
20 relating to an individual's health status before the
21 individual's effective date of coverage, or if coverage is



1 denied the date of the denial, under a group or individual
2 accident and health or sickness insurance policy, including but
3 not limited to a limitation or exclusion for a condition
4 identified as a result of a pre-enrollment questionnaire or
5 physical examination, or a review of medical records relating to
6 the pre-enrollment period.

7 §431:10A- Prohibited discrimination in premiums or
8 contributions. A group accident and health or sickness
9 insurance policy and a health insurer offering group or
10 individual accident and health or sickness insurance coverage
11 issued or renewed in this State shall not require an individual,
12 as a condition of enrollment or continued enrollment under the
13 policy, to pay a premium or contribution based on the
14 individual's gender that is greater than the premium or
15 contribution for a similarly situated individual of the opposite
16 gender who is covered under the same policy."

17 SECTION 5. Chapter 432, Hawaii Revised Statutes, is
18 amended by adding four new sections to article 1 to be
19 appropriately designated and to read as follows:

20 "§432:1- Essential health care benefits. (a) Every
21 hospital or medical service plan contract issued or renewed in



1 this State shall include at least the following essential health
2 care benefits:

- 3 (1) Ambulatory patient services;
- 4 (2) Emergency services;
- 5 (3) Hospitalization benefits;
- 6 (4) Pregnancy, maternity, and newborn care;
- 7 (5) Mental health and substance use disorder services,
8 including behavioral health treatment, mental and
9 behavioral health inpatient services, and substance
10 use disorder treatment;
- 11 (6) Rehabilitative services and devices;
- 12 (7) Laboratory services;
- 13 (8) Preventive and wellness services and chronic disease
14 management; and
- 15 (9) Pediatric services, excluding oral and vision care.

16 (b) Hospital or medical service plan contracts delivered
17 or issued for delivery in this State shall also include the
18 following additional benefits:

- 19 (1) Contraceptive coverage, including contraceptive
20 methods and counseling, as prescribed by a health care
21 provider; and



1 (2) Breastfeeding coverage, including breastfeeding
2 support, counseling, and equipment for the duration of
3 breastfeeding;

4 provided that a mutual benefit society shall not impose any
5 cost-sharing requirements, including copayments, coinsurance, or
6 deductibles, on a member or subscriber with respect to the
7 benefits covered under this subsection.

8 (c) This section shall not apply to policies that provide
9 coverage for specified diseases or other limited benefit
10 coverage, as provided pursuant to section 431:10A-102.5.

11 §432:1- Extension of dependent coverage. A group
12 hospital or medical service plan contract and a mutual benefit
13 society offering group or individual hospital and medical
14 service plan contracts that provide coverage of dependent
15 children shall continue to make such coverage available for an
16 adult child until the child turns twenty-six years of age.
17 Nothing in this section shall require a plan contract to make
18 coverage available for a child of a child receiving dependent
19 coverage.

20 §432:1- Prohibition of preexisting condition exclusions.
21 (a) A hospital or medical service plan contract issued or



1 renewed in this State shall not impose any preexisting condition
2 exclusion.

3 (b) For purposes of this section, a "preexisting condition
4 exclusion" means a limitation or exclusion of benefits,
5 including a denial of coverage, based on the fact that any
6 condition was present before the effective date of coverage, or
7 if coverage is denied the date of the denial, under a group or
8 individual hospital and medical service plan contract, whether
9 or not any medical advice, diagnosis, care, or treatment was
10 recommended or received before that day.

11 The term "preexisting condition exclusion" includes any
12 limitation or exclusion of benefits, including a denial of
13 coverage, applicable to an individual as a result of information
14 relating to an individual's health status before the
15 individual's effective date of coverage, or if coverage is
16 denied the date of the denial, under a group or individual
17 hospital or medical service plan contract, including but not
18 limited to a limitation or exclusion for a condition identified
19 as a result of a pre-enrollment questionnaire or physical
20 examination or a review of medical records relating to the pre-
21 enrollment period.



1 §432:1- Prohibited discrimination in premiums or
2 contributions. A group hospital or medical service plan
3 contract and a mutual benefit society offering group or
4 individual hospital or medical service plan contracts issued or
5 renewed in this State shall not require an individual, as a
6 condition of enrollment or continued enrollment under the plan
7 contract, to pay a premium or contribution based on the
8 individual's gender that is greater than the premium or
9 contribution for a similarly situated individual of the opposite
10 gender who is covered under the same plan contract."

11 SECTION 6. Chapter 432D, Hawaii Revised Statutes, is
12 amended by adding four new sections to be appropriately
13 designated and to read as follows:

14 "§432D- Essential health care benefits. (a) Every
15 health maintenance organization policy, contract, plan, or
16 agreement issued or renewed in this State shall include at least
17 the following essential health care benefits:

- 18 (1) Ambulatory patient services;
- 19 (2) Emergency services;
- 20 (3) Hospitalization benefits;
- 21 (4) Pregnancy, maternity, and newborn care;



- 1 (5) Mental health and substance use disorder services,
2 including behavioral health treatment, mental and
3 behavioral health inpatient services, and substance
4 use disorder treatment;
- 5 (6) Rehabilitative services and devices;
- 6 (7) Laboratory services;
- 7 (8) Preventive and wellness services and chronic disease
8 management; and
- 9 (9) Pediatric services, excluding oral and vision care.
- 10 (b) Every health maintenance organization policy,
11 contract, plan, or agreement delivered or issued for delivery in
12 this State shall also include the following additional benefits:
- 13 (1) Contraceptive coverage, including contraceptive
14 methods and counseling, as prescribed by a health care
15 provider; and
- 16 (2) Breastfeeding coverage, including breastfeeding
17 support, counseling, and equipment for the duration of
18 breastfeeding;
- 19 provided that a health maintenance organization shall not impose
20 any cost-sharing requirements, including copayments,



1 coinsurance, or deductibles, on an enrollee or subscriber with
2 respect to the benefits covered under this subsection.

3 (c) This section shall not apply to policies that provide
4 coverage for specified diseases or other limited benefit
5 coverage, as provided pursuant to section 431:10A-102.5.

6 §432D- Extension of dependent coverage. A group
7 contract and a health maintenance organization offering group or
8 individual policies, contracts, plans, or agreements that
9 provide coverage of dependent children shall continue to make
10 such coverage available for an adult child until the child turns
11 twenty-six years of age. Nothing in this section shall require
12 a policy, contract, plan, or agreement to make coverage
13 available for a child of a child receiving dependent coverage.

14 §432D- Prohibition of preexisting condition exclusions.

15 (a) A health maintenance organization policy, contract, plan,
16 or agreement issued or renewed in this State shall not impose
17 any preexisting condition exclusion.

18 (b) For purposes of this section, a "preexisting condition
19 exclusion" means a limitation or exclusion of benefits,
20 including a denial of coverage, based on the fact that any
21 condition was present before the effective date of coverage, or



1 if coverage is denied the date of the denial, under a group or
2 individual health maintenance organization policy, contract,
3 plan, or agreement, whether or not any medical advice,
4 diagnosis, care, or treatment was recommended or received before
5 that day.

6 The term "preexisting condition exclusion" includes any
7 limitation or exclusion of benefits, including a denial of
8 coverage, applicable to an individual as a result of information
9 relating to an individual's health status before the
10 individual's effective date of coverage, or if coverage is
11 denied the date of the denial, under a group or individual
12 health maintenance organization policy, contract, plan, or
13 agreement, such as a condition identified as a result of a pre-
14 enrollment questionnaire or physical examination or a review of
15 medical records relating to the pre-enrollment period.

16 §432D- Prohibited discrimination in premiums or
17 contributions. A group contract and a health maintenance
18 organization offering group or individual policies, contracts,
19 plans, or agreements issued or renewed in this State shall not
20 require an individual, as a condition of enrollment or continued
21 enrollment under a policy, contract, plan, or agreement, to pay



1 a premium or contribution based on the individual's gender that
2 is greater than the premium or contribution for a similarly
3 situated individual of the opposite gender who is covered under
4 the same policy, contract, plan, or agreement."

5 SECTION 7. Notwithstanding any other law to the contrary,
6 the requirements for essential health care benefits, extension
7 of dependent coverage, prohibition of preexisting condition
8 exclusions, and prohibition of discrimination in premiums and
9 contributions required under sections 4, 5, and 6 of this Act
10 shall apply to all health benefits plans under chapter 87A,
11 Hawaii Revised Statutes, issued, renewed, modified, altered, or
12 amended on or after the effective date of this Act.

13 SECTION 8. New statutory material is underscored.

14 SECTION 9. This Act shall take effect on July 1, 2090;
15 provided that sections 2 through 6 shall take effect upon the
16 repeal of the federal Patient Protection and Affordable Care
17 Act, Public Law No. 111-148, pursuant to an act of Congress and
18 shall apply to all health coverage policies, contracts, plans,
19 and agreements issued on or after that date.



Report Title:

Health Insurance; Individual Mandate; Essential Benefits;
Covered Services; Extended Coverage; Preexisting Conditions

Description:

Ensures that benefits of the Affordable Care Act are preserved under State law in the case of repeal of the ACA by Congress. Preserves the individual mandate, minimum essential benefit requirements, extended dependent coverage, and prohibitions on preexisting condition exclusions and gender discrimination in premiums and costs. Establishes a trust fund and procedures to reimburse insurers for unrecouped costs of providing minimal essential insurance benefits. (HB552 HD1)

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

