

**"CHAPTER 393
PREPAID HEALTH CARE ACT**

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Cross References

Comparable benefits under motor vehicle insurance personal injury protection benefits, see §431:10C-103.6.
Conformance to federal law, see §431:2-201.5.
Hawaii health insurance exchange, see chapter 435H.
Health maintenance organization act, see chapter 432D.
Publication of fees by prepaid health care contractors, see §386-21.5.

Law Journals and Reviews

Implementation of Hawai'i's Prepaid Health Care Act: Root Cause of a Health Care Monopoly. VII HBJ, no. 13, at 9 (2003).

Case Notes

Employee's claims for breach of contract and fiduciary duty, alleging employer's failure to notify employee of conversion rights from group to individual health insurance policy, preempted by Employee Retirement Income Security Act of 1974. 768 F. Supp. 734 (1991).

District court concluded, for purposes of plaintiffs' motion to remand to state court only, that: (1) some of plaintiffs' allegations in counts II (violations of chapter 480) and III (breach of fiduciary duty) of the complaint were expressly preempted by ERISA pursuant to 29 U.S.C. §1144(a) and were not subject to the exception for this chapter, and (2) therefore, those claims were necessarily federal in nature, and defendants' removal of the action based on federal question jurisdiction was proper. 892 F. Supp. 2d 1288 (2012).

"PART I. SHORT TITLE; PURPOSE; DEFINITIONS

[§393-1] Short title. This chapter shall be known as the "Hawaii Prepaid Health Care Act". [L 1974, c 210, pt of §1]

Cross References

Congressional exemption from preemption, see P.L. No. 97-473, §301 (29 U.S.C. §1144(b)(5)).

Case Notes

Federal Employee Retirement Income Security Act of 1974 preempts Hawaii Prepaid Health Care Act. 442 F. Supp. 695 (1977), aff'd, 633 F.2d 760 (1980); aff'd, 454 U.S. 801 (1981).

" **§393-2 Findings and purpose.** The cost of medical care in case of sudden need may consume all or an excessive part of a person's resources. Prepaid health care plans offer a certain measure of protection against such emergencies. It is the purpose of this chapter in view of the spiraling cost of comprehensive medical care to provide this type of protection for the employees in this State. Although a large segment of the labor force in the State already enjoys coverage of this type either by virtue of collective bargaining agreements, employer-sponsored plans, or individual initiative, there is a need to extend that protection to workers who at present do not possess any or possess only inadequate prepayment coverage.

This chapter shall not be construed to diminish any protection already provided pursuant to collective bargaining agreements or employer-sponsored plans that is more favorable to the employees benefited thereby than the protection provided by this chapter or at least equivalent thereto, provided that presently existing collective bargaining agreements shall not be affected by the provisions of this section. [L 1974, c 210, pt of §1; am L 1978, c 199, §1]

" **§393-3 Definitions generally.** As used in this chapter, unless the context clearly requires otherwise:

"Department" means the department of labor and industrial relations.

"Director" means the director of labor and industrial relations.

"Employer" means any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, or corporation, whether domestic or foreign, a debtor in possession or receiver or trustee in bankruptcy, or the legal representative of a deceased person, who has one or more regular employees in the employer's employment. "Employer" does not include:

- (1) The State, any of its political subdivisions, or any instrumentality of the State or its political subdivisions;
- (2) The United States government or any instrumentality of the United States;
- (3) Any other state or political subdivision thereof or instrumentality of such state or political subdivision;
- (4) Any foreign government or instrumentality wholly owned by a foreign government, if[:]
 - (A) The service performed in its employ is of a character similar to that performed in foreign

- countries by employees of the United States government or of an instrumentality thereof; and
- (B) The United States Secretary of State has certified or certifies to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and of instrumentalities thereof.

"Employment" means service, including service in interstate commerce, performed for wages under any contract of hire, written or oral, expressed or implied, with an employer, except as otherwise provided in sections 393-4 and 393-5.

"Premium" means the amount payable to a prepaid health care plan contractor as consideration for the contractor's obligations under a prepaid health care plan.

"Prepaid health care plan" means any agreement by which any prepaid health care plan contractor undertakes in consideration of a stipulated premium:

- (1) Either to furnish health care, including hospitalization, surgery, medical or nursing care, drugs or other restorative appliances, subject to, if at all, only a nominal per service charge; or
- (2) To defray or reimburse, in whole or in part, the expenses of health care.

"Prepaid health care plan contractor" means:

- (1) Any medical group or organization which undertakes under a prepaid health care plan to provide health care;
- (2) Any nonprofit organization which undertakes under a prepaid health care plan to defray or reimburse in whole or in part the expenses of health care; or
- (3) Any insurer who undertakes under a prepaid health care plan to defray or reimburse in whole or in part the expenses of health care.

"Recipient of social service payments" includes:

- (1) A person who is an eligible recipient of social services such as attendant care and day care services; and
- (2) A corporation or private agency that contracts directly with the department of human services to provide attendant care and day care authorized under the Social Security Act, as amended.

"Regular employee" means a person employed in the employment of any one employer for at least twenty hours per

week but does not include a person employed in seasonal employment. "Seasonal employment" for the purposes of this paragraph means employment in a seasonal pursuit as defined in section 387-1 by a seasonal employer during a seasonal period or seasonal periods for the employer in the seasonal pursuit or employment by an employer engaged in the cultivating, harvesting, processing, canning, and warehousing of pineapple during its seasonal periods. The director by rule and regulation may determine the kind of employment that constitutes seasonal employment.

"Wages" means all remuneration for services from whatever source, including commissions, bonuses, and tips and gratuities paid directly to any individual by a customer of the individual's employer, and the cash value of all remuneration in any medium other than cash.

The director may issue regulations for the reasonable determination of the cash value of remuneration in any medium other than cash.

If the employee does not account to the employee's employer for the tips and gratuities received and is engaged in an occupation in which the employee customarily and regularly receives more than \$20 a month in tips, the combined amount received by the employee from the employee's employer and from tips shall be deemed to be at least equal to the wage required by chapter 387 or a greater sum as determined by regulation of the director.

"Wages" does not include the amount of any payment specified in section 383-11 or 392-22 or chapter 386. [L 1974, c 210, pt of §1; am L 1976, c 78, §1; gen ch 1985; am L 2007, c 259, §5]

Revision Note

Pursuant to §23G-15:

- (1) Numeric designations deleted and paragraphs renumbered;
- (2) In paragraph (4) of the definition of "employer", (A) and (B) reformatted as subparagraphs (A) and (B), and in paragraph (4)(A), punctuation changed; and
- (3) In paragraph (1) of the definition of "prepaid health care plan contractor", "or" deleted.

" **[§393-4] Place of performance.** "Employment" includes an individual's entire service, performed within or both within and without this State if:

- (1) The service is localized in this State; or
- (2) The service is not localized in any state but some of the service is performed in this State and[:]

- (A) The individual's base of operation, or, if there is no base of operation, the place from which such service is directed or controlled, is in the State; or
- (B) The individual's base of operation or place from which the service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this State. [L 1974, c 210, pt of §1]

" **§393-5 Excluded services.** "Employment" as defined in section 393-3 does not include:

- (1) Service performed by an individual in the employ of an employer who, by the laws of the United States, is responsible for care and cost in connection with such service;
- (2) Service performed by an individual in the employ of [the] individual's spouse, son, or daughter, and service performed by an individual under the age of twenty-one in the employ of the individual's father or mother;
- (3) Service performed in the employ of a voluntary employee's beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of the association or their dependents or their designated beneficiaries, if:
 - (A) Admission to membership in the association is limited to individuals who are officers or employees of the United States government; and
 - (B) No part of the net earnings of the association inures (other than through such payments) to the benefits of any private shareholder or individual;
- (4) Service performed by an individual for an employer as an insurance agent or as an insurance solicitor if all service performed by the individual for the employer is performed for remuneration by way of commission;
- (5) Service performed by an individual for an employer as a real estate salesperson or as a real estate broker if all service performed by the individual for the employer is performed for remuneration by way of commission;
- (6) Service performed by an individual who, pursuant to the federal Economic Opportunity Act of 1964, is not subject to the provisions of law relating to federal employment, including unemployment compensation;

- (7) Domestic in-home and community-based services for persons with developmental and intellectual disabilities under the medicaid home and community-based services program pursuant to title 42 Code of Federal Regulations sections 440.180 and 441.300, and title 42 Code of Federal Regulations, part 434, subpart A, as amended, or when provided through state funded medical assistance to individuals ineligible for medicaid, and identified as chore, personal assistance and habilitation, residential habilitation, supported employment, respite, and skilled nursing services, as the terms are defined and amended from time to time by the department of human services, performed by an individual whose services are contracted by a recipient of social service payments and who voluntarily agrees in writing to be an independent contractor of the recipient of social service payments; and
- (8) Domestic services, which include attendant care, and day care services authorized by the department of human services under the Social Security Act, as amended, or when provided through state-funded medical assistance to individuals ineligible for medicaid, when performed by an individual in the employ of a recipient of social service payments. For the purposes of this paragraph only, a "recipient of social service payments" is a person who is an eligible recipient of social services such as attendant care or day care services. [L 1974, c 210, pt of §1; am L 1978, c 110, §6; gen ch 1985; am L 1987, c 339, §4; am L 1989, c 217, §2; gen ch 1993; am L 2007, c 259, §9; am L 2011, c 220, §15; am L 2012, c 157, §3 and c 158, §4]

" **§393-6 Principal and secondary employer defined; coercion, interference, etc. prohibited.** If an individual is concurrently a regular employee of two or more employers as defined in this chapter, the principal employer shall be the employer who pays the individual the most wages; provided that if one of the employers, who does not pay the most wages, employs the regular employee for at least thirty-five hours per week, the employee shall determine which of the employers shall be the employee's principal employer. The employee's other employers are secondary employers. An employer so designated as the principal employer shall remain as such principal employer for one year or until change of employment, whichever is earlier.

If an individual is concurrently a regular employee of a public entity which is not an employer as defined in section 393-3 and of an employer as defined in section 393-3 the latter shall be deemed to be a secondary employer.

An employer who, directly or indirectly, interferes with or coerces or attempts to coerce an employee in making a determination under this section shall be subject to the penalty provided under subsection 393-33(b). [L 1974, c 210, pt of §1; am L 1975, c 51, §1; gen ch 1985]

" **§393-7 Required health care benefits.** (a) A prepaid health care plan shall qualify as a plan providing the mandatory health care benefits required under this chapter if it provides for health care benefits equal to, or medically reasonably substitutable for, the benefits provided by prepaid health plans of the same type, as specified in section 393-12(a)(1) or (2), which have the largest numbers of subscribers in the State. This applies to the types and quantity of benefits as well as to limitations on reimbursability, including deductibles, and to required amounts of co-insurance.

The director, after advice by the prepaid health care advisory council, shall determine whether benefits provided in a plan, other than the plan of the respective type having the largest numbers of subscribers in the State, comply with the standards specified in this subsection.

(b) A prepaid group health care plan shall also qualify for the mandatory health care benefits required under this chapter if it is demonstrated by the health care plan contractor offering such coverage to the satisfaction of the director after advice by the prepaid health care advisory council that the plan provides for sound basic hospital, surgical, medical, and other health care benefits at a premium commensurate with the benefits included taking proper account of the limitations, co-insurance features, and deductibles specified in such plan. Coverage under a plan which provides aggregate benefits that are more limited than those provided by plans qualifying under subsection (a) shall be in compliance with section 393-11 only if the employer contributes at least half of the cost of the coverage of dependents under such plan.

(c) Subject to the provisions of subsections (a) and (b) without limiting the development of medically more desirable combinations and the inclusion of new types of benefits, a prepaid health care plan qualifying under this chapter shall include at least the following benefit types:

- (1) Hospital benefits:

- (A) In-patient care for a period of at least one hundred twenty days of confinement in each calendar year covering:
 - (i) Room accommodations;
 - (ii) Regular and special diets;
 - (iii) General nursing services;
 - (iv) Use of operating room, surgical supplies, anesthesia services, and supplies;
 - (v) Drugs, dressings, oxygen, antibiotics, and blood transfusion services;
- (B) Out-patient care:
 - (i) Covering use of out-patient hospital;
 - (ii) Facilities for surgical procedures or medical care of an emergency and urgent nature.
- (2) Surgical benefits:
 - (A) Surgical services performed by a licensed physician, as determined by plans meeting the standards of subsections (a) and (b);
 - (B) After-care visits for a reasonable period;
 - (C) Anesthesiologist services.
- (3) Medical benefits:
 - (A) Necessary home, office, and hospital visits by a licensed physician;
 - (B) Intensive medical care while hospitalized;
 - (C) Medical or surgical consultations while confined.
- (4) Diagnostic laboratory services, x-ray films, and radio-therapeutic services, necessary for diagnosis or treatment of injuries or diseases.
- (5) Maternity benefits, at least if the employee has been covered by the prepaid health care plan for nine consecutive months prior to the delivery.
- (6) Substance abuse benefits:
 - (A) Alcoholism and drug addiction are illnesses and shall receive benefits as such. In-patient and out-patient benefits for the diagnosis and treatment of substance abuse, including but not limited to alcoholism and drug addiction, shall be specifically stated and shall not be less than the benefits for any other illness, except as provided in this subsection. Medical treatment of substance abuse shall not be limited or reduced by restricting coverage to the mental health or psychiatric benefits of a plan. However, any psychiatric services received as a result of the treatment of substance abuse may be limited to the psychiatric benefits of the plan;

- (B) Out-patient benefits provided by a physician, psychiatrist, or psychologist, without restriction as to place of service; provided that health plans of the type specified in section 393-12(a) shall retain for the contractor the option of:
 - (i) Providing the benefits in its own facility and utilizing its own staff;
 - (ii) Contracting for the provision of these benefits; or
 - (iii) Authorizing the patient to utilize outside services and defraying or reimbursing the expenses at a rate not to exceed that for provision of services utilizing the health contractor's own facilities and staff;
- (C) Detoxification and acute care benefits in a hospital or any other public or private treatment facility, or portion thereof, providing services especially for the detoxification of intoxicated persons or drug addicts, which is appropriately licensed, certified, or approved by the department of health in accordance with the standards prescribed by the Joint Commission on Accreditation of Hospitals. In-patient benefits for detoxification and acute care shall be limited in the case of alcohol abuse to three admissions per calendar year, not to exceed seven days per admission, and shall be limited in the case of other substance abuse to three admissions per calendar year, not to exceed twenty-one days per admission;
- (D) Prepaid health plans shall not be required to make reimbursements for care furnished by government agencies and available at no cost to a patient, or for which no charge would have been made if there were no health plan coverage.

(d) The prepaid health care advisory council shall be appointed by the director and shall include representatives of the medical and public health professions, representatives of consumer interests, and persons experienced in prepaid health care protection; provided that a person representing a health maintenance organization under chapter 432D, a mutual benefit society issuing individual and group hospital or medical service plans under chapter 432, or any other health care organization shall not be a member. The membership of the council shall not exceed seven individuals. [L 1974, c 210, pt of §1; am L 1976, c 25, §2; am L 2003, c 206, §2]

Revision Note

Pursuant to §23G-15, in,

- (1) Subsection (c)(1)(A)(v), punctuation changed;
- (2) Subsection (c)(6)(A), punctuation changed;
- (3) Subsection (c)(6)(B)(i), "or" deleted and punctuation changed;
- (4) Subsection (c)(6)(B)(ii) and (iii), punctuation changed; and
- (5) Subsection (c)(6)(C), punctuation changed.

Law Journals and Reviews

Implementation of Hawai'i's Prepaid Health Care Act: Root Cause of a Health Care Monopoly. VII HBJ, no. 13, at 9 (2003).

"PART II. MANDATORY COVERAGE

[\$393-11] Coverage of regular employees by group prepaid health care plan. Every employer who pays to a regular employee monthly wages in an amount of at least 86.67 times the minimum hourly wage, specified in chapter 387, as rounded off by regulation of the director, shall provide coverage of such employee by a prepaid group health care plan qualifying under section 393-7 with a prepaid health care plan contractor in accordance with the provisions of this chapter. [L 1974, c 210, pt of §1]

" **[\$393-12] Choice of plan type and of contractor.** (a) Every employer required to provide coverage for the employer's employees by a prepaid group health care plan under this chapter shall elect whether coverage shall be provided by:

- (1) A plan which obligates the prepaid health care plan contractor to furnish the required health care benefits; or
- (2) A plan which obligates the prepaid health care plan contractor to defray or reimburse the expenses of health care.

The employer's election is binding for one year.

(b) Whether the employer elects a plan type described in subsection (a)(1) or in subsection (a)(2), the employer may elect the particular contractor but the employee shall not be obligated to contribute a greater amount to the premium than the employee would have to contribute had the employer elected coverage with the contractor providing the prevailing coverage of the respective type in the State.

Subject to the provision of section 393-20, the employer shall provide coverage with the prepaid health care plan contractor selected pursuant to this subsection for all the employer's employees in the State electing this type of coverage who are covered by the provisions of this chapter, except for employees covered by the health care provisions of an applicable collective bargaining agreement as provided in section 393-19(b) first sentence. [L 1974, c 210, pt of §1; gen ch 1985]

" **[§393-13] Liability for payment of premium; withholding; recovery of premium.** Unless an applicable collective bargaining agreement specifies differently every employer shall contribute at least one-half of the premium for the coverage required by this chapter and the employee shall contribute the balance; provided that in no case shall the employee contribute more than 1.5 per cent of the employee's wages; and provided that if the amount of the employee's contribution is less than one-half of the premium, the employer shall be liable for the whole remaining portion of the premium.

The employer shall withhold the employee's share from the employee's wages with respect to pay periods as specified by the director.

If an employee separates from the employee's employment after the employee's employer has prepaid the employee's share of the cost of providing health care coverage, the employer may deduct an amount not to exceed one-half of the premium cost but without regard to the 1.5 per cent limitation, from the last salary or wages due the employee, or seek other appropriate means to recover the premium. [L 1974, c 210, pt of §1; am L 1976, c 206, §1; gen ch 1985]

" **[§393-14] Commencement of coverage.** The employer shall provide the coverage required by this chapter for any regular employee, who has been in the employer's employ for four consecutive weeks, at the earliest time thereafter at which coverage may be provided with the prepaid health care plan contractor selected pursuant to this chapter. [L 1974, c 210, pt of §1; gen ch 1985]

" **[§393-15] Continuation of coverage in case of inability to earn wages.** If an employee is hospitalized or otherwise prevented by sickness from working, the employer shall enable the employee to continue the employee's coverage by contributing to the premium the amounts paid by the employer toward such premium prior to the employee's sickness for the period that such employee is hospitalized or prevented by sickness from working. This obligation shall not exceed a period of three

months following the month during which the employee became hospitalized or disabled from working, or the period for which the employer has undertaken the payment of the employee's regular wages in such case, whichever is longer. [L 1974, c 210, pt of §1; gen ch 1985]

" **[§393-16] Liability of secondary employer.** An employer who has been notified by an employee, in the form prescribed by the director, that the employer is not the principal employer as defined in section 393-6 shall be relieved of the duty of providing the coverage required by this chapter until the employer is notified by the employee pursuant to section 393-18 that the employer has become the principal employer. The employer shall notify the director, in the form prescribed by the director, that the employer is relieved from the duty of providing coverage or of any change in that status. [L 1974, c 210, pt of §1; gen ch 1993]

" **[§393-17] Exemption of certain employees.** (a) In addition to the exemption specified in section 393-16, an employer shall be relieved of the employer's duty under section 393-11 with respect to any employee who has notified the employer, in the form specified by the director, that the employee is:

- (1) Protected by health insurance or any prepaid health care plan established under any law of the United States;
- (2) Covered as a dependent under a prepaid health care plan, entitling the employee to the health benefits required by this chapter;
- (3) A recipient of public assistance or covered by a prepaid health care plan established under the laws of the State governing medical assistance.

(b) Employers receiving notice of a claim of exemption under this section shall notify the director of such claim in the form prescribed by the director. [L 1974, c 210, pt of §1; gen ch 1985]

" **[§393-18] Termination of exemption.** (a) If an exemption which has been claimed by an employee pursuant to section 393-17 terminates because of any change in the circumstances entitling the employee to claim such exemption, the employee shall promptly notify the principal employer of the termination of the exemption and the employer thereupon shall provide coverage as required by this chapter.

(b) If because of a change in the employment situation of an employee or a redetermination by an employee as provided in

section 393-6, a principal employer becomes a secondary employer or a secondary employer becomes the principal employer, the employee shall promptly notify the employers affected of such change and the new principal employer shall provide coverage as required by this chapter. [L 1974, c 210, pt of §1]

" **§393-19 Freedom of collective bargaining.** (a) In addition to the policy stated in section 393-2, nothing in this chapter shall be construed to limit the freedom of employees to bargain collectively for different prepaid health care coverage, if the protection provided by the negotiated plan is more favorable to the employees benefited than the protection provided by this chapter or at least equivalent thereto, or for a different allocation of the costs thereof. A collective bargaining agreement may provide that the employer oneself undertakes to provide the health care specified in the agreement.

(b) If the employees rendering particular types of services are not covered by the health care provisions of the applicable collective bargaining agreements to which their employer is a party, the provisions of this chapter shall be applicable with respect to them. An employer or group of employers shall be deemed to have complied with the provisions of this chapter if they undertake to provide health care services pursuant to a collective bargaining agreement and the services are available to all other employees not covered by such agreement. [L 1974, c 210, pt of §1; am L 1978, c 199, §2; gen ch 1993]

Cross References

Collective bargaining, see chapter 377.

Case Notes

1978 amendment preempted by Employees Retirement Income Security Act. 594 F. Supp. 449 (1984).

" **[§393-20] Adjustment of employer-sponsored plans.** Where employees subject to the coverage of this chapter are included in the coverage provisions of an employer-sponsored prepaid health care plan covering similar employees employed outside the State and the majority of such employees are not subject to this chapter, the benefits applicable to the employees covered by this chapter shall be adjusted within one year after the effective date of this chapter so as to meet the requirements of this chapter. [L 1974, c 210, pt of §1]

" **§393-21 Individual waivers; additional withholding for dependents.** (a) An employee may waive individually all of the required health care benefits pursuant to this chapter by:

- (1) Requesting the waiver by a writing submitted to the employer; and
- (2) Receiving approval of the waiver from the director upon the director determining that the employee has other coverage under a prepaid health care plan which provides benefits that meet the standards prescribed in section 393-7.

(b) The employer who receives from an employee a written request for a waiver under this section shall transmit to the director a copy of the waiver, on a form prescribed by the director, and a copy of the prepaid health care plan on the basis of which the waiver is requested.

(c) A waiver under this section is binding for one year and is renewable for subsequent one-year periods.

(d) An employer who, directly or indirectly, coerces or attempts to coerce an employee in making a waiver under this section shall be subject to the penalty provided under section 393-33(b).

(e) An employee may not agree to pay a greater share of the premium for such benefits than is required by this chapter.

(f) Subject to section 393-7(b), an employee may consent to pay a greater share of the employee's wages and to a withholding of such share by the employer for the purpose of providing prepaid health care benefits of the employee's dependents under the plan providing such benefits for the employee's self. [L 1974, c 210, pt of §1; am L 1976, c 81, §1; gen ch 1985]

" **[§393-22] Exemption of followers of certain teachings or beliefs.** This chapter shall not apply to any individual who pursuant to the teachings, faith, or belief of any group, depends for healing upon prayer or other spiritual means. [L 1974, c 210, pt of §1]

" **[§393-23] Joint provision of coverage.** Employers may form associations for the purpose of jointly providing prepaid health care protection under this chapter for their employees with the contractors authorized to provide such coverage in the State. [L 1974, c 210, pt of §1]

" **§393-24 Noncomplying employer held liable for employee's health care costs.** Any employer who fails to provide coverage as required by this chapter shall be liable to pay for the

health care costs incurred by an eligible employee during the period in which the employer failed to provide coverage. [L 1977, c 91, §1]

"PART III. ADMINISTRATION AND ENFORCEMENT

[\$393-31] Enforcement by the director. Except as otherwise provided in section 393-7 the director shall administer and enforce this chapter. The director may appoint such assistants and such clerical, stenographic, and other help as may be necessary for the proper administration and enforcement of this chapter subject to any civil service act relating to state employees. [L 1974, c 210, pt of §1]

" **[\$393-32] Rulemaking and other powers of the director.** The director may adopt, amend, or repeal, pursuant to chapter 91, such rules and regulations as the director deems necessary or suitable for the proper administration and enforcement of this chapter.

The director may round off the amounts specified in this chapter for the purpose of eliminating payments from the premium supplementation fund in other than even dollar amounts or other purposes.

The director may prescribe the filing of reports by prepaid health care plan contractors and prescribe the form and content of requests by employers for premium supplementation and the period for the payment thereof. [L 1974, c 210, pt of §1; gen ch 1985]

" **§393-33 Penalties; injunction.** (a) If an employer fails to comply with section 393-11, 393-12, 393-13, or 393-15 the employer shall pay a penalty of not less than \$25 or of \$1 for each employee for every day during which such failure continues, whichever sum is greater. The penalty shall be assessed under rules and regulations promulgated pursuant to chapter 91 and shall be collected by the director and paid into the trust fund for premium supplementation established by section 393-41. The director may, for good cause shown, remit all or any part of the penalty.

(b) Any employer, employee, or prepaid health care plan contractor who wilfully fails to comply with any other provision of this chapter or any rule or regulation thereunder may be fined not more than \$200 for each such violation.

(c) Any employer who fails to initiate compliance with the coverage requirements of section 393-11 for a period of thirty days, may be enjoined by the circuit court of the circuit in which the employer's principal place of business is located from

carrying on the employer's business any place in the State so long as the default continues, such action for injunction to be prosecuted by the attorney general or any county attorney if so requested by the director. [L 1974, c 210, pt of §1; am L 1977, c 190, §1; gen ch 1985; am L 2013, c 100, §9]

" **§393-34 Penalties.** (a) Any person who, after twenty-one days written notice and the opportunity to be heard by the director, is found to have violated any provision of this chapter or rule adopted thereunder for which no penalty is otherwise provided, shall be fined not more than \$250 for each offense.

(b) All fines collected pursuant to this chapter shall be deposited into the [premium supplementation trust fund] created by section 393-41. [L 1991, c 107, §3; am L 2013, c 100, §9]

"PART IV. PREMIUM SUPPLEMENTATION

§393-41 Establishment of premium supplementation trust fund. There is established in the treasury of the State, separate and apart from all public moneys or funds of the State, a trust fund for premium supplementation which shall be administered exclusively for the purposes of this chapter. All premium supplementations payable under this part shall be paid from the fund. The fund shall consist of:

(1) All money appropriated by the State for the purposes of premium supplementation under this part; and

(2) All fines and penalties collected pursuant to this chapter. [L 1974, c 210, pt of §1; am L 2013, c 100, §7]

Revision Note

In the last sentence, (1) and (2) reformatted as paragraphs (1) and (2), and in paragraph (1), punctuation added pursuant to §23G-15.

" **[§393-42] Management of the fund.** The director of finance shall be the treasurer and custodian of the premium supplementation fund and shall administer the fund in accordance with the directions of the director of labor and industrial relations. All moneys in the fund shall be held in trust for the purposes of this part only and shall not be expended, released, or appropriated or otherwise disposed of for any other purpose. Moneys in the fund may be deposited in any depository bank in which general funds of the State may be deposited but

such moneys shall not be commingled with other state funds and shall be maintained in separate accounts on the books of the depository bank. Such moneys shall be secured by the depository bank to the same extent and in the same manner as required by the general depository law of the State; and collateral pledged for this purpose shall be kept separate and distinct from any other collateral pledged to secure other funds of the State. The director of finance shall be liable for the performance of the director of finance's duties under this section as provided in chapter 37. [L 1974, c 210, pt of §1; gen ch 1985]

" **[§393-43] Disbursements from the fund.** Expenditures of moneys in the premium supplementation fund shall not be subject to any provisions of law requiring specific appropriations or other formal release by the state officers of money in their custody. All payments from the fund shall be made upon warrants drawn upon the director of finance by the comptroller of the State supported by vouchers approved by the director. [L 1974, c 210, pt of §1]

" **[§393-44] Investment of moneys.** With the approval of the department the director of finance may, from time to time, invest such moneys in the premium supplementation fund as are in excess of the amount deemed necessary for the payment of benefits for a reasonable future period. Such moneys may be invested in bonds of any political or municipal corporation or subdivision of the State, or any of the outstanding bonds of the State, or invested in bonds or interest-bearing notes or obligations of the State (including state director of finance's warrant notes issued pursuant to chapter 40), or of the United States, or those for which the faith and credit of the United States are pledged for the payment of principal and interest, or in federal land bank bonds or joint stock farm loan bonds. The investments shall at all times be so made that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits. The director of finance shall dispose of securities or other properties belonging to the fund only under the direction of the director of labor and industrial relations. [L 1974, c 210, pt of §1]

" **[§393-45] Entitlement to premium supplementation.** (a) An employer who employs less than eight employees entitled to coverage under this chapter and who provides coverage to such employees pursuant to section 393-7(a) shall be entitled to premium supplementation from the fund if the employer's share of the cost of providing such coverage as determined by sections 393-13 and 393-15 exceeds 1.5 per cent of the total wages

payable to such employees and if the amount of such excess is greater than five per cent of the employer's income before taxes directly attributable to the business in which such employees are employed.

(b) The amount of the supplementation shall be that part of the employer's share of the premium cost which exceeds the limits specified in subsection (a). [L 1974, c 210, pt of §1]

" **[§393-46] Income directly attributable to the business.**

(a) "Income directly attributable to the business" means gross profits from the business minus deductions for:

- (1) Compensation of officers;
- (2) Salaries and wages, except wages paid by an individual proprietor to oneself;
- (3) Repairs;
- (4) Taxes on business and business property;
- (5) Business advertising;
- (6) Amounts contributed to employee benefit plans;
- (7) Interest on business indebtedness;
- (8) Rent on business property; and
- (9) Other expenses necessary for the current conduct of business.

(b) Deductions shall not include:

- (1) Bad debts;
- (2) Contributions or gifts, other than those listed under subsection (a)(6);
- (3) Amortization and depreciation; or
- (4) Losses by fire, storm, casualty, or theft.

(c) The director may promulgate rules and regulations necessary to define income directly attributable to business for the purpose of section 393-45. [L 1974, c 210, pt of §1; gen ch 1985]

" **[§393-47] Claim of premium supplementation.** An employer entitled to premium supplementation shall file a claim therefor in the manner provided by regulation of the director. The employer shall have the burden of proof of establishing the employer's entitlement. [L 1974, c 210, pt of §1; gen ch 1985]

" **§393-48 Prepaid health care benefits to be paid from the premium supplementation fund; recovery of benefits.** Prepaid health care benefits shall be paid from the premium supplementation fund to an employee who is entitled to receive prepaid health care benefits but cannot receive such benefits because of bankruptcy of the employee's employer or because the employee's employer is not in compliance with this chapter. Benefits paid from the premium supplementation fund to such

employee may be recovered from the employee's bankrupt or noncomplying employer. The director shall institute administrative and legal actions as provided in section 393-33 to effect recovery of such benefits. [L 1978, c 3, §1; gen ch 1985]

"PART V. TERMINATION OF CHAPTER--REPEALED

§393-51 REPEALED. L 1994, c 99, §§2, 3 as superseded by L 2011, c 228, §§2, 3.