

SB385

Measure Title: RELATING TO INSURANCE.

Report Title: High Deductible Health Plans; Health Savings Accounts; Insurance

Description: Authorizes insurers, mutual benefit societies, and health maintenance organizations to offer, sell, or renew, on or after January 1, 2018, a high deductible health plan in conjunction with a health savings account to an employer subject to the Prepaid Health Care Act together with a prepaid health care plan insurance policy. Specifies limitations for high deductible health plans and health savings accounts.

Companion: [HB407](#)

Package: None

Current Referral: CPH, JDL/WAM

Introducer(s): BAKER (Introduced by request of another party)

DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LIEUTENANT GOVERNOR



LINDA CHU TAKAYAMA
DIRECTOR

LEONARD HOSHIJO
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
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February 13, 2017

To: The Honorable Rosalyn H. Baker, Chair,
The Honorable Clarence K. Nishihara, Vice Chair, and
Members of the Senate Committee on Commerce, Consumer Protection,
and Health

Date: Monday, February 13, 2017
Time: 10:30 a.m.
Place: Conference Room 229, State Capitol

From: Linda Chu Takayama, Director
Department of Labor and Industrial Relations (DLIR)

Re: S.B. No. 385 Relating to Insurance

I. OVERVIEW OF PROPOSED LEGISLATION

This proposal permits insurers, mutual benefit societies, and health maintenance organizations to offer, sell, or renew, on or after January 1, 2018, a high deductible health plan in combination with a health savings account (HSA) to an employer subject to the PHC Act, chapter 393, Hawaii Revised Statutes (HRS) together with a prepaid health care insurance policy.

The Department offers comments on the measure below.

II. CURRENT LAW

Chapter 393, HRS, the Prepaid Law is an employer-based healthcare mandate. Section 393-11, HRS, requires that an employer provide an eligible employee with health insurance by a prepaid health care (PHC) plan qualifying under section 393-7, HRS. The Prepaid Health Care Advisory Council reviews these plans and makes a recommendation to the DLIR Director for approval or disapproval.

III. COMMENTS ON THE SENATE BILL

§393-7 Required health care benefits establish the criteria by which employer-provided healthcare insurance plans are evaluated by the Prepaid Health Care

Advisory Council that reviews these plans and makes a recommendation to the DLIR Director for approval or disapproval. §393-7 provides two different methods for employers to comply with providing healthcare insurance coverage under paragraphs (a) and (b).

§393-7(a) reads in part, "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.

§393-7(b) reads, "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.

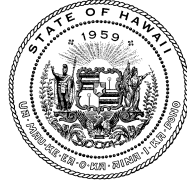
The cost of the coverage to the employee under §393-7(a) and (b) is subject to limits on the amount of the employee portion for the coverage pursuant to §393-13, which reads in part, "Unless an applicable collective bargaining agreement specifies differently every employer shall contribute at least one-half 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 question as to whether a high-deductible health plan in tandem with a Health Savings Account could potentially qualify as a Prepaid plan as recommended by the Prepaid Council and approved by the Director is yes, but only under §393-7(b) because high-deductible plans with HSAs have higher deductible amounts and higher out-of-pocket ceilings than would be allowed under §393-7(a).

However, the potential approval of such a plan would require that the benefits, including limitations, co-insurance and deductibles satisfy §393-7(b) and be approved by the Director. Thus, whether high-deductible health plans and medical savings accounts can satisfy the Act will depend upon the package an employer presents to the Director.

DAVID Y. IGE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



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To: The Honorable Rosalyn H. Baker, Chair
and Members of the Senate Committee on Commerce,
Consumer Protection, and Health

Date: Monday, February 13, 2017
Time: 10:30 A.M.
Place: Conference Room 229, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: S.B. 385, Relating to Insurance

The Department of Taxation (Department) appreciates the intent of S.B. 385 and provides the following comments for your consideration.

S.B. 385 authorizes high deductible health plans to be issued in conjunction with Health Savings Accounts (HSAs). The bill states that the intent is for contributions to and distributions from HSAs to receive favorable tax treatment. The requirement becomes effective January 1, 2018.

The Department notes that both federal and state law already afford favorable tax treatment to HSAs. Section 223 of the Internal Revenue Code (IRC) provides tax benefits to HSAs and Hawaii income tax law conforms to section 223, IRC, through section 235-2.3(a), Hawaii Revised Statutes.

The favorable tax treatment of HSAs includes the deductibility of contributions to HSAs, subject to a limit, tax-free growth of the contributions held by HSAs, and the exemption from income tax of any distribution from an HSA if the distribution is used exclusively to pay qualified medical expenses of any account beneficiary.

Because Hawaii conforms to section 223, IRC, the above tax benefits are accorded to Health Savings Accounts for purposes of Hawaii income tax law. Accordingly, this bill will have no effect on the Department or on tax administration.

Thank you for the opportunity to provide comments.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2017**

ON THE FOLLOWING MEASURE:
S.B. NO. 385, RELATING TO INSURANCE.

BEFORE THE:
SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

DATE: Monday, February 13, 2017 **TIME:** 10:30 a.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Daniel K. Jacob, Deputy Attorney General

Chair Baker and Members of the Committee:

The Department of the Attorney General provides the following comments regarding legal concerns about this bill.

The purpose of this bill is to facilitate the establishment of health plans that qualify as high deductible health plans in Hawaii, which may be purchased for use with a health savings account and which allow the labor force to receive contributions to health savings accounts. Initially, we note that the terms “stand-alone high deductible plan” and “stand-alone health savings account,” as found on page 2, lines 20-21, are unclear and should be defined.

Perhaps more importantly, we want to advise the Legislature understands that this bill may be subject to an Employee Retirement Income Security Act (ERISA) preemption challenge. Subsection (b), of the new section being added to article 10A, chapter 431, Hawaii Revised Statutes, by section 2 of the bill on page 2, lines 10-15, on its face appears directed at insurance entities and is placed within the insurance code. However, it may be interpreted as requiring an employer to offer an employee two plans, which may fall outside ERISA’s insurance savings clause.

Furthermore, the risk of an ERISA preemption challenge may arise because the purpose of the bill as provided on page 1, lines 1-5, indicates an attempt to regulate employee welfare benefit plans by providing, “[t]he purpose of this Act is to facilitate the establishment of health plans that qualify as high deductible health plans in Hawaii and may be purchased for use with a health savings account and allow the *labor force* to

receive contributions to health savings accounts.” (Emphasis added.) In addition, the purpose of the bill as provided on page 1, lines 10-13, also provides that, the “Act shall be liberally construed to allow *employers and employees* to receive maximum tax benefits provided in federal or state law through use of a high deductible health plan.” (Emphasis added.)

ERISA is a comprehensive federal legislative scheme that “supersede[s] any and all State laws insofar as they may now or hereafter relate to any employee benefit plan.” 29 U.S.C.A. § 1144(a).¹ Because the stated purpose of the bill appears to be directed to employee welfare benefit plans and laws relating to employee welfare benefit plans would be preempted by ERISA, this bill could be preempted by ERISA. This bill, however, may be saved through the insurance savings clause found within ERISA that permits states to regulate the business of insurance, regardless of its direct or indirect effect on employee benefit plans. 29 U.S.C. § 1144(b)(2)(A). See *Kentucky Ass'n of Health Plans, Inc. v. Miller*, 538 U.S. 329, 342 (2003).

Our comments above equally apply to section 3 of the bill starting on page 4.

Although we are not recommending that this bill be held on legal grounds, we want the committee to be informed of the possible legal risk.

Thank you for the opportunity to comment.

¹ The subsection, in full, provides as follows:

Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title. This section shall take effect on January 1, 1975.



AMERICANS FOR DEMOCRATIC ACTION

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February 8 , 2017

TO: Honorable Chair Baker and Members of the Commerce, Consumer Protection, and Health Committee

RE: SB 385 Relating to Insurance
Opposition for hearing on Feb. 13

Americans for Democratic Action is an organization founded in the 1950s by leading supporters of the New Deal and led by Patsy Mink in the 1970s. We are devoted to the promotion of progressive public policies.

We oppose SB 385 as it would authorize insurers to offer, sell, or renew, on or after January 1, 2018, a high deductible health plan in conjunction with a health savings account. Health savings accounts are the wrong direction in health policy. They may work for wealthy people who can afford them, but they increase risk for those who enroll in them and make the whole system less stable. The state should be thinking about a transition to comprehensive single-payer not regressing to increased private risk.

Thank you for your consideration.

Sincerely,

John Bickel
President



Perfect moments, always

JTB HAWAII, INC.

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HONOLULU, HAWAII 96817-5072
(808) 397-5000

February 10, 2017

Testimony on SB 385, February 13, 2017, Room 229
Senator Roslyn Baker and Members of this Committee:

To the Honorable Members of the Hawai'i State Legislature,

I am pleased to offer this written letter of support for Senate Bill No. 385 that address the establishment of Health Savings Accounts in Hawai'i.

Please allow me to introduce myself: I am Lena Young, Corporate Director of Operations & Human Resources for JTB Hawaii. I have also been involved with benefits administration through many years with such companies as Bank of Hawaii, Kamehameha Schools/Bishop Estate, Bank of America, Hilo Hattie and City Mill.

Like many employers in Hawai'i, JTB Hawaii has witnessed a dramatic increase in our health care costs for our employees. We've attempted many initiatives including employee wellness programs to contain costs.

Health Savings Accounts (HSAs) provide the right incentive for employees to be mindful about appropriate health care consumption. The funds in HSAs belong to employees and are available to use for medical services now and in the future. Employees can take any funds in HSAs with them if they leave their jobs. HSAs provide an opportunity for employees to save for retiree medical costs. This is especially important as so many employees leave employment before age 65 without medical insurance. Plus savings invested in HSAs can grow tax-free under current IRS rules. HSAs can also be used to pay for long term care insurance premiums and out of pocket expenses.

HSAs are the kind of partnership between employers and employees that will create an environment of mutual responsibility and reduce unnecessary health care expenditures. We urge you to pass legislation that will promote such a partnership through Health Savings Accounts.

Mahalo,

Lena Young
Corporate Director
Corporate Operations & Human Resources



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February 13, 2017

The Honorable Rosalyn H. Baker, Chair
The Honorable Clarence K. Nishihara, Vice Chair
Senate Committee on Commerce, Consumer Protection and Health

Re: SB 385 – Relating to Insurance

Dear Chair Baker, Chair Nishihara, and Committee Members:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on SB 385, which authorizes insurers, mutual benefit societies, and health maintenance organizations to offer, sell, or renew, on or after January 1, 2018, a high deductible health plan in conjunction with a health savings account (HSA). HMSA has serious concerns with this Bill and offers the following comments.

HSAs are authorized under federal law and afford employees and their families, who also have a high-deductible health plan, a tax-advantaged medical savings account. The HSA is not subject to federal income tax at the time of deposit, and it is portable – unspent balances continue to accumulate over time and follow the employee, should the employee change jobs. The monies deposited in an HSA may only be used for qualified medical expenses.

While HMSA is appreciative of the concept of an HSA, we are concerned that SB 385 inappropriately places the administration of an HSA with health plans. An HSA is a benefit that an employer affords an employee, and it is not a product that a plan offers or administers. While the plan has the option of offering a high deductible product, along with a product that is compliant with the Prepaid Healthcare Act, the plan should not serve as the primary custodian or trustee of the HSA. We believe that responsibility more appropriately lies with a financial institution, selected by the employer that is more accustomed to managing trust accounts. Such an institution more readily and expeditiously could accommodate the trust account provisions of this legislation.

Thank you for the opportunity to testify on SB 385. Your consideration of our concerns is appreciated.

Sincerely,

Mark K. Oto
Director, Government Relations

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 9, 2017 1:38 PM
To: CPH Testimony
Cc: myamakawa@hawaiidentalsservice.com
Subject: Submitted testimony for SB385 on Feb 13, 2017 10:30AM

SB385

Submitted on: 2/9/2017

Testimony for CPH on Feb 13, 2017 10:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Mark Yamakawa	Individual	Support	No

Comments: Health savings accounts are a needed option for Hawaii citizens to help save and pay for health care expenses that are not covered by commercial or government payors.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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