
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 includes an individual coverage requirement, commonly known as
4 the individual mandate, that requires most people in the country
5 to have health insurance and imposes tax penalties on those
6 without an exemption who do not comply. The individual mandate
7 is an important part of the overall health reforms established
8 under the Affordable Care Act, which was designed to extend
9 insurance to nearly all people, including those with medical
10 conditions that require expensive care and who may have
11 previously been denied coverage. However, to pay for care,
12 insurance companies need to have a large enrollment pool of
13 consumers, especially young people and healthy people who use
14 fewer services, as these individuals broaden the risk pool and
15 reduce premium costs for all insured persons. Thus, the
16 individual mandate was adopted to guarantee this broad
17 enrollment base and ensure that health insurance premiums remain



1 more affordable for everyone. The legislature notes that
2 because the majority of the United States population receives
3 health insurance coverage either through employer-sponsored
4 health insurance or through public programs such as medicaid and
5 medicare, the people most impacted by the mandate are those who
6 purchase insurance through the individual market.

7 The legislature further finds that Congressional
8 Republicans recently passed a sweeping tax bill that effectively
9 repealed the individual mandate, by reducing the tax penalty in
10 the existing law to \$0 or zero per cent of household income
11 above a certain threshold. Insurance companies and
12 Congressional Democrats have warned that premiums will increase
13 and insurance markets will be weakened if the tax penalties for
14 going without health insurance are eliminated. The
15 Congressional Budget Office has estimated that repealing the
16 mandate penalties would increase premiums by ten per cent and
17 leave 4,000,000 more people uninsured in 2019 and 13,000,000
18 more uninsured by 2027.

19 The legislature additionally finds that it is important to
20 preserve Hawaii's insurance market and ensure that insurance
21 premiums remain stable and affordable for Hawaii's consumers.



1 Establishing a state-level individual mandate, similar to the
2 one adopted by Massachusetts in 2006, will help achieve these
3 goals.

4 Accordingly, the purpose of this Act is to:

- 5 (1) Establish an individual mandate for certain qualified
6 taxpayers to sign up for and maintain health insurance
7 throughout the year, or pay a penalty on their
8 individual income tax return, subject to certain
9 exceptions; and
- 10 (2) Authorize the insurance commissioner to develop a
11 process to determine whether a health plan is
12 affordable.

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

16 "§235- Creditable coverage; qualified taxpayers. (a)
17 For each month beginning after December 31, 2018, the following
18 qualified taxpayers age eighteen and over shall obtain and
19 maintain creditable coverage so long as it is deemed affordable
20 by the insurance commissioner, pursuant to section 431:2- :

21 (1) Residents of the State; or



1 (2) Individuals who became residents of the State within
2 sixty-three days, in the aggregate;
3 provided that residents who within sixty-three days have
4 terminated any prior creditable coverage shall obtain and
5 maintain creditable coverage within sixty-three days of the
6 termination.

7 (b) Every qualified taxpayer who files or is required to
8 file an individual income tax return as a resident of the State
9 shall indicate on the return, in a manner prescribed by the
10 director of taxation, whether the qualified taxpayer:

11 (1) Had creditable coverage in force for each of the
12 twelve months of the taxable year for which the return
13 is filed as required under subsection (a), whether
14 covered as an individual or as a named beneficiary of
15 a policy covering multiple individuals; or

16 (2) Had a certificate issued by the insurance
17 commissioner, pursuant to section 431:2- .

18 (c) If a qualified taxpayer fails to indicate on the
19 income tax return whether the qualified taxpayer had the
20 coverage required under subsection (a), or indicates on the
21 income tax return that the qualified taxpayer did not have the



coverage required under subsection (a) in force, then a penalty shall be assessed on the return. If the qualified taxpayer indicates that the qualified taxpayer had the coverage in force but the director of taxation determines, based upon the information available, that the requirement of subsection (a) was not met, then the director of taxation shall assess the penalty.

(d) If in any taxable year, in whole or in part, a qualified taxpayer does not comply with the requirement of subsection (a), the director of taxation shall retain any amount overpaid by the qualified taxpayer and apply it toward any penalty payment required by this subsection; provided that the amount retained shall not exceed . The penalty shall be assessed for each of the months the qualified taxpayer did not meet the requirement of subsection (a); provided that any lapse in coverage of sixty-three days or less shall not be counted in calculating the penalty; provided further that nothing in this subsection shall authorize the commissioner to retain any amount for purposes that otherwise would be paid to a claimant agency or agencies as debts recoverable under sections 231-51 to 231-59.



1 (e) If the amount retained pursuant to subsection (d) is
2 insufficient to meet the penalty assessed, the director of
3 taxation shall notify the qualified taxpayer of the balance due
4 on the penalty and related interest.

5 (f) The department of taxation shall have all enforcement
6 and collection procedures available under this chapter to
7 collect any penalties assessed under this section.

8 (g) A qualified taxpayer who disputes the determination of
9 applicability or affordability, as enforced by the department,
10 may seek a review of this determination through an appeals
11 process established by the insurance commissioner pursuant to
12 section 431:2- ; provided that no additional penalties shall be
13 enforced against a qualified taxpayer seeking review until the
14 review is complete and any subsequent appeals are exhausted.

15 (h) An individual shall be exempt from the requirement to
16 maintain creditable coverage and shall not be subject to a
17 penalty under this section for any month if the individual is a
18 member of a health care sharing ministry for the month. As used
19 in this subsection, "health care sharing ministry" means an
20 organization:



- 1 (1) That has been certified to be tax exempt under section
2 501(a) of the Internal Revenue Code of 1986, as
3 amended;
- 4 (2) In which members share a common set of ethical or
5 religious beliefs and share medical expenses among
6 members in accordance with those beliefs and without
7 regard to the state in which a member resides or is
8 employed;
- 9 (3) In which members retain membership even after they
10 develop a medical condition;
- 11 (4) Which, or a predecessor of which, has been in
12 existence at all times since December 31, 1999, and
13 medical expenses of its members have been shared
14 continuously and without interruption since at least
15 December 31, 1999; and
- 16 (5) That conducts an annual audit, which is performed by
17 an independent certified public accounting firm in
18 accordance with generally accepted accounting
19 principles and which is made available to the public
20 upon request.



1 (i) This section shall not apply to any individual, who
2 pursuant to the teachings, faith, or religious beliefs of any
3 group, depends upon prayer or other spiritual means for healing
4 if the individual:

5 (1) Files a sworn affidavit with the individual's income
6 tax return stating that the individual did not have
7 creditable coverage and that the refusal to obtain and
8 maintain creditable coverage during the twelve months
9 of the taxable year for which the return was filed was
10 based on the individual's sincerely held teachings,
11 faith, or religious belief; and

12 (2) Does not receive medical health care during the
13 taxable year for which the return is filed.

14 (j) For purposes of this section, the following
15 definitions shall apply:

16 "Creditable coverage" means coverage of a qualified
17 taxpayer under any of the following health insurance plans or as
18 a named beneficiary receiving coverage on another's health
19 insurance plan with no lapse of coverage for more than sixty-
20 three days:



- 1 (1) An individual or group health insurance plan that
2 meets the requirements for mandatory health care
3 benefits under section 393-7(a) or (b);
- 4 (2) An individual or group health insurance plan available
5 from the State's health insurance marketplace;
- 6 (3) Part A or Part B of Title XVIII of the Social Security
7 Act;
- 8 (4) Title XIX or XXI of the Social Security Act, other
9 than coverage consisting solely of benefits under
10 section 1903(v) or section 1928 of Title XIX of the
11 Social Security Act;
- 12 (5) Title 10 United States Code chapter 55;
- 13 (6) A medical care program of the Indian Health Service or
14 of a tribal organization authorized under section 102
15 of the Indian Self-Determination and Education
16 Assistance Act;
- 17 (7) A state health benefits risk pool;
- 18 (8) A health plan offered under title 5 United States Code
19 chapter 89;



1 (9) A public health plan as defined in federal regulations
2 authorized by the Public Health Service Act, section
3 2701(c) (1) (I), as amended by Public Law 104-191;

4 (10) A health benefit plan under the Peace Corps Act, title
5 22 United States Code section 2504(e); or

6 (11) Any other qualifying coverage required by the Health
7 Insurance Portability and Accountability Act of 1996,
8 as amended, or by regulations promulgated under that
9 Act.

10 The term "creditable coverage" shall not include: a
11 limited benefit health insurance plan, as that term is defined
12 under section 431:10A-102.5; insurance arising out of a workers'
13 compensation law or similar law; motor vehicle medical payment
14 insurance; insurance under which benefits are payable with or
15 without regard to fault and which is statutorily required to be
16 contained in a liability insurance policy or equivalent self-
17 insurance; or coverage supplemental to the coverage provided
18 under title 10 United States Code chapter 55, if offered as a
19 separate insurance policy.

20 "Health insurance marketplace" means a service that helps
21 individuals and small businesses shop for and enroll in



1 affordable health insurance, as established by the federal
2 Patient Protection and Affordable Care Act of 2010, or any
3 similar successor service available at the federal or state
4 level.

5 "Qualified taxpayer" means an individual:

6 (1) Who files an individual income tax return for the
7 taxable year;

8 (2) Who is not claimed or is not otherwise eligible to be
9 claimed as a dependent by another taxpayer for federal
10 or Hawaii state individual income tax purposes;

11 (3) Who has been physically present in the State for more
12 than nine months during the taxable year;

13 (4) Whose household income for the taxable year does not
14 exceed _____ per cent of the federal poverty guideline
15 for Hawaii, as most recently published by the United
16 States Department of Health and Human Services for the
17 taxpayer's family size; or

18 (5) Who, if married at the close of the taxable year,
19 files a joint return for the taxable year; provided
20 that this paragraph shall not apply to a married
21 taxpayer who is unable to file a joint return because



1 the taxpayer is a victim of domestic abuse or spousal
2 abandonment and is living apart from the taxpayer's
3 spouse at the time the taxpayer files the return."

4 SECTION 3. Chapter 431, Hawaii Revised Statutes, is
5 amended by adding a new section to part II of article 2 to be
6 appropriately designated and to read as follows:

7 "§431:2- Creditable coverage; powers of commissioner.

8 (a) The commissioner shall establish a process to determine
9 which health plans shall be considered affordable, for purposes
10 of complying with the creditable coverage requirements under
11 section 235- .

12 (b) The list of health plans deemed to be creditable
13 coverage shall be updated annually and posted on the insurance
14 division's website.

15 (c) The commissioner shall have the following additional
16 powers:

17 (1) Establish procedures for granting an annual
18 certification upon request of a qualified taxpayer who
19 has sought health insurance coverage through Hawaii's
20 insurance marketplace, attesting that, for the
21 purposes of enforcing section 235- , no health



1 benefit plan that meets the definition of creditable
2 coverage was deemed affordable by the commissioner for
3 that qualified taxpayer. The commissioner shall
4 maintain a list of qualified taxpayers for whom the
5 certificates have been granted; and

6 (2) Establish an appeals procedure for enforcement actions
7 taken by the department of taxation under section
8 235- , including standards to govern appeals based
9 upon the assertion that imposition of the penalty
10 under section 235- would create extreme hardship.

11 (d) The insurance commissioner, in conjunction with the
12 department of taxation, may adopt rules pursuant to chapter 91,
13 for purposes of implementing this section and section 235- .

14 (e) For purposes of this section:

15 "Creditable coverage" shall have the same meaning as in
16 section 235- .

17 "Health insurance marketplace" shall have the same meaning
18 as in section 235- .

19 "Qualified taxpayer" shall have the same meaning as in
20 section 235- ."

21 SECTION 4. New statutory material is underscored.



1 SECTION 5. This Act shall take effect on July 1, 3000;
2 provided that this Act shall be repealed on December 31, 2023.



Report Title:

Health Insurance; Creditable Coverage; Individual Mandate;
Qualified Taxpayers

Description:

Establishes an individual mandate for certain qualified taxpayers to sign up for and maintain health insurance throughout the year, or pay a penalty on their individual income tax return, subject to certain exceptions. Sunsets on 12/31/2023. (SB2924 HD2)

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