# ACT 335 S.B. NO. 55

A Bill for an Act Relating to Long-term Care Insurance.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to promote the availability of long-term care insurance, protect applicants from unfair or deceptive sales or enrollment practices, establish standards for long-term care insurance, facilitate public understanding and comparison of long-term care insurance policies, and facilitate flexibility and innovation in the development of long-term care insurance coverage.

SECTION 2. Section 1 to Section 6, inclusive, as set forth in Act 253, Session Laws of Hawaii, 1987, relating to long-term care insurance, are repealed, and Chapter 431, Hawaii Revised Statutes, is amended by adding a new part to Article 10A to be appropriately designated and to read as follows:

## "PART . LONG-TERM CARE INSURANCE

**§431:10A- Definitions.** As used in this part, unless the context requires otherwise:

"Applicant" means:

(1) In the case of an individual long-term care insurance policy, the person who seeks to contract for benefits; and

(2) In the case of a group long-term care insurance policy, the proposed certificate holder.

"Certificate" means any certificate issued under a group long-term care insurance policy, which policy has been delivered or issued for delivery in this State.

"Commissioner" means the insurance commissioner of this State.

"Group long-term care insurance" means a long-term care insurance policy:

(1) Delivered or issued for delivery in this State and issued to:

(A) One or more employers or labor organizations, or a trust or the trustees of a fund established by one or more employers or labor organizations, or a combination thereof, for employees or former employees or a combination thereof or for members or former members or a combination thereof, of the labor organizations; or

(B) Any professional, trade, or occupational association for its members or former or retired members, or combination thereof, if the association:

(i) Is composed of individuals all of whom are or were actively engaged in the same profession, trade, or occupation; and

(ii) Has been maintained in good faith for purposes other than obtaining insurance; or

(C) A group other than as described in subparagraphs (A) and (B), subject to a finding by the commissioner that:

(i) The issuance of the group policy is not contrary to the best interest of the public;

(ii) The issuance of the group policy would result in economies of acquisition or administration; and

(iii) The benefits are reasonable in relation to the premiums charged.

(2) Affording coverage to a resident of this State under a group policy issued in another state to a group described in paragraph (1)(C), if this State or another state having statutory and regulatory requirements substantially similar to those adopted in this State has made a determination that the requirements have been met.

"Long-term care insurance" means any insurance policy or rider advertised, marketed, offered, or designed to provide coverage for not less than twelve consecutive months for each covered person on an expense incurred, indemnity, prepaid or other basis, for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital. The term includes group and individual policies or riders whether issued by insurers, fraternal benefit societies, nonprofit health, hospital, and medical service corporations, prepaid health plans, health maintenance organizations, or any similar organization. Long-term care insurance shall not include any insurance policy which is offered primarily to provide basic medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage.

"Policy" means any policy, contract, subscriber agreement, rider, or endorsement delivered or issued for delivery in this State by an insurer, fraternal benefit society, nonprofit health, hospital, or medical service corporation, prepaid health plan, health maintenance organization, or any similar organization.

**§431:10A- Prohibition.** No insurance policy may be advertised, marketed, or offered as long-term care or nursing home insurance unless it complies with this part. A policy which is expressly or implicitly advertised, marketed, or offered as long-term care insurance shall meet the requirements of this chapter. A policy which is not expressly or implicitly advertised, marketed, or offered as long-term care insurance need not meet the requirements of this chapter.

**§431:10A- Disclosure standards.** The commissioner may adopt rules under chapter 91 that include standards for full and fair disclosure setting forth the manner, content, and required disclosures for the sale of long-term care insurance policies, terms of renewability, initial and subsequent conditions of eligibility, nonduplication of coverage provisions, coverage of dependents, preexisting conditions, termination of insurance, probationary periods, limitations, exceptions, reductions, elimination periods, requirements for replacement, recurrent conditions, and definitions of terms.

**§431:10A- Preexisting condition.** (a) No long-term care insurance policy may:

(1) Be canceled, nonrenewed, or otherwise terminated on the grounds of the age or the deterioration of the mental or physical health of the insured individual or certificate holder; or

(2) Contain a provision establishing a new waiting period in the event existing coverage is converted to or replaced by a new or other form within the same company, except with respect to an increase in benefits voluntarily selected by the insured individual or group policyholder.

(b) No long-term care insurance policy or certificate shall use a definition of preexisting condition which is more restrictive than the following: "preexisting condition" means the existence of symptoms which were treated by a provider of health care services within the periods specified below:

(1) Six months preceding the effective date of coverage of an insured person who is sixty-five years of age or older on the effective date of coverage; or

(2) Twenty-four months preceding the effective date of coverage of an insured person who is under sixty-five years of age on the effective date of coverage.

(c) No long-term care insurance policy may exclude coverage for a loss or confinement which is the result of a preexisting condition unless the loss or confinement begins within the periods specified below:

(1) Six months following the effective date of coverage of an insured person who is sixty-five years of age or older on the effective date of coverage; or

(2) Twenty-four months following the effective date of coverage of an insured person who is under sixty-five years of age on the effective date of coverage.

(d) The commissioner may extend the limitation periods in subsections (b) and (c) as to specific age group categories in specific policy forms upon findings that the extension is in the best interest of the public.

(e) The definition of "preexisting condition" does not prohibit an insurer from using an application form designed to elicit the complete health history of an applicant, and, on the basis of the answers on that application, from underwriting in accordance with that insurer's established underwriting standards.

**§431:10A- Prior institutionalization.** No long-term care insurance policy which provides benefits only following institutionalization shall condition such benefits for long-term care service upon admission to a facility for the same or related conditions within a period of less than thirty days after discharge from the institution. Policies for long-term care insurance may, but need not, predicate provisions of benefits upon prior institutionalization.

**§431:10A- Loss ratio standards.** The commissioner may adopt rules establishing loss ratio standards for long-term care insurance policies provided that a specific reference to long-term care insurance policies is contained in the rules.

**§431:10A- Outline of coverage required.** An outline of coverage shall be delivered to an applicant for an individual long-term care insurance policy at the time of application for an individual policy. In the case of direct response solicitations, the insurer shall deliver the outline of coverage upon the applicant's request, but regardless of request shall make the delivery not later than at the time of policy delivery. The outline of coverage shall include:

(1) A description of the principal benefits and coverage provided in the policy;

(2) A statement of the principal exclusions, reductions, and limitations contained in the policy;

(3) A statement of the renewal provisions, including any reservation in the policy of a right to change premiums; and

(4) A statement that the outline of coverage is a summary of the policy issued or applied for, and that the policy should be consulted to determine governing contractual provisions.

**§431:10A- Right to return; free look provision.** (a) Individual long-term care insurance policies shall have the right to return the policy within thirty

days of its delivery and to have the premium refunded if, after examination of the policy, the policyholder is not satisfied for any reason. Individual long-term care insurance policies shall have a notice prominently printed on the first page of the policy or attached thereto stating in substance that the policyholder shall have the right to return the policy within thirty days of its delivery and to have the premium refunded if, after examination of the policy, the policyholder is not satisfied for any reason.

(b) A person insured under a long-term care insurance policy issued pursuant to a direct response shall have the right to return the policy within thirty days of its delivery and to have the premium refunded if, after examination, the insured person is not satisfied for any reason. Long-term care insurance policies issued pursuant to a direct response solicitation shall have a notice prominently printed on the first page or attached thereto stating in substance that the insured person shall have the right to return the policy within thirty days of its delivery and to have the premium refunded if after examination the insured person is not satisfied for any reason.

**§431:10A- Group policy certificate requirements.** A certificate issued pursuant to a group long-term care insurance policy which is delivered or issued for delivery in this State shall include:

(1) A description of the principal benefits and coverage provided in the policy;
(2) A statement of the principal exclusions, reductions, and limitations contained in the policy; and
(3) A statement that the group master policy determines governing contractual provisions.

**§431:10A- Exceptions.** Nothing in this part shall limit or restrict the sale or offering for sale in this State of insurance which provides long-term care benefits in noninstitutional settings, including a private residence.

**§431:10A- Rules.** The commissioner shall adopt necessary rules under chapter 91 to implement this part."

SECTION 3. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 4. This Act is not intended to supersede the obligations of entities subject to this Act to comply with the substance of other applicable insurance laws insofar as they do not conflict with this Act, except that laws and rules designed and intended to apply to medicare supplement insurance policies shall not be applied to long-term care insurance.

SECTION 5. This Act shall, upon its approval, take effect on July 1, 1989 only if H.B. No. 1894[1] (which makes Act 253, Session Laws of Hawaii 1987, as part of the insurance code) in any form passed by the legislature, Regular Session of 1989, becomes an Act.

(Approved June 16, 1989.)

**Note**

1. Act 276, this volume.