

ACT 185

S.B. NO. 1066

A Bill for an Act Relating To Insurance.

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

SECTION 1. 432:1-407, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§432:1-407**~~]]~~ **Protection against insolvency.** (a) Net worth requirements are as follows:

- (1) Before issuing a certificate of authority pursuant to section 432:1-301, the commissioner shall require that the mutual benefit society has an initial net worth of [~~\$1,500,000~~] \$2,000,000 and the society shall thereafter maintain the minimum net worth required under paragraph (2);
- (2) Except as provided in [~~paragraph (3);~~] paragraphs (3) and (4), every mutual benefit society shall maintain a minimum net worth equal to the greater of:
 - (A) [~~\$1,500,000;~~] \$2,000,000;
 - (B) Two per cent of annual premium revenues as reported on the most recent annual financial statement filed with the commissioner on the first \$150,000,000 of premium revenues and one per cent of annual premium revenues on the premium revenues in excess of \$150,000,000; or
 - (C) An amount equal to eight per cent of the sum of annual health care expenditures and operating expenses as reported on the most recent financial statement filed with the commissioner;
- (3) The minimum net worth requirement set forth in paragraph (2)(A) shall be phased in as follows:
 - (A) Seventy-five per cent of the required amount by January 1, 2001;
and
 - (B) One hundred per cent of the required amount by December 31, 2002;
and
- [~~(3)~~] (4) The minimum net worth requirement set forth in subparagraph (2)(C) shall be phased in as follows:
 - (A) Fifty per cent of the required amount [~~required by subparagraph (2)(C)~~] by December 31, 1997;
 - (B) Seventy-five per cent of the required amount [~~required by subparagraph (2)(C)~~] by December 31, 1998; and
 - (C) One hundred per cent of the required amount [~~required by subparagraph (2)(C)~~] by December 31, 1999.
- (b) Deposit requirements are as follows:
 - (1) Unless otherwise provided below, each mutual benefit society shall deposit with the commissioner or, at the discretion of the commissioner, with any organization or trustee acceptable to the commissioner through which a custodial or controlled account is utilized, cash, securities, or any combination of these or other measures that are acceptable to the commissioner which at all times shall have a value of not less than \$300,000;
 - (2) A mutual benefit society that is in operation on July 3, 1997 shall make a deposit equal to \$150,000. Within one year after July 3, 1997, a society that is in operation on July 3, 1997 shall make an additional deposit of \$150,000 for a total of \$300,000;
 - (3) Deposits shall be an admitted asset of the mutual benefit society in the determination of net worth;
 - (4) All income from deposits shall be an asset of the mutual benefit society. A society that has made a securities deposit may withdraw that deposit or any part thereof after making a substitute deposit of cash, securities, or any combination of these or other measures of equal amount and value. Any securities shall be subject to approval by the commissioner before being deposited or substituted;
 - (5) The deposit shall be used to protect the interests of the mutual benefit society's members and to assure continuation of health care services to

members of a society which is in rehabilitation, liquidation, or conservation. The commissioner may use the deposit for administrative costs directly attributable to a receivership or liquidation. If a society is placed in receivership or liquidation, the deposit shall be an asset subject to article 15 of chapter 431; and

- (6) The commissioner may reduce or eliminate the deposit requirement if the mutual benefit society deposits with the director of finance or the insurance commissioner, for the protection of all subscribers and members, wherever located, cash, acceptable securities, or surety, and delivers to the commissioner a certificate to that effect, duly authenticated by the appropriate state official holding the deposit.

(c) Every mutual benefit society, when determining liabilities, shall include an amount estimated in the aggregate to provide for any unearned premium, and for the payment of all claims for health care expenditures which have been incurred, whether reported or unreported, which are unpaid and for which the organization is or may be liable, and to provide for the expense of adjustment or settlement of claims. The liabilities shall be computed in accordance with rules adopted by the commissioner upon reasonable consideration of the ascertained experience and character of the society.

(d) Every contract between a mutual benefit society and a participating provider of health care services shall be in writing and shall set forth that in the event the society fails to pay for health care services as set forth in the contract, the subscriber or member shall not be liable to the provider for any sums owed by the society. If a contract with a participating provider has not been reduced to writing as required by this subsection, or if a contract fails to contain the required prohibition, the participating provider shall not collect or attempt to collect from the subscriber or member sums owed by the society. No participating provider, or agent, trustee, or assignee thereof, may maintain any action at law against a subscriber or member to collect sums owed by the society.

(e) The commissioner shall require that each mutual benefit society have a plan for handling insolvency which allows for continuation of benefits for the duration of the contract period for which premiums have been paid and continuation of benefits to members who are confined on the date of insolvency in an inpatient facility until their discharge or expiration of benefits. In considering such a plan, the commissioner may require:

- (1) Insurance to cover the expenses to be paid for continued benefits after the insolvency;
- (2) Provisions in provider contracts that obligate the provider to provide services for the duration of the period after the society's insolvency for which premium payment has been made and until the members' discharge from inpatient facilities;
- (3) Insolvency reserves;
- (4) Acceptable letters of credit; or
- (5) Any other arrangements acceptable to the commissioner to assure that benefits are continued as specified above.

(f) An agreement to provide health care services between a provider and a mutual benefit society shall require that a provider shall give the organization at least sixty days' advance notice in the event of termination.

(g) Each domestic mutual benefit society shall prepare for review by the commissioner on or before the forty-fifth day of each quarter, a copy of its quarterly net solvency report verified by at least two principal officers. The commissioner may prescribe the forms on which the reports are to be prepared. Each domestic mutual benefit society shall maintain a copy of its current net solvency report on the premises of its primary place of business. The commissioner may order an examina-

tion, subject to article 2 of chapter 431, to determine whether a domestic mutual benefit society is in compliance with this section. Any domestic mutual benefit society that fails or refuses to prepare or produce for review the quarterly net solvency report as required by this subsection shall be liable for a penalty in an amount not less than \$100 and not more than \$500 per day.’’

SECTION 2. Section 432D-8, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§432D-8**~~]]~~ **Protection against insolvency.** (a) Net worth requirements are as follows:

- (1) Before issuing any certificate of authority, the commissioner shall require that the health maintenance organization has an initial net worth of ~~[\$1,500,000]~~ \$2,000,000 and shall thereafter maintain the minimum net worth required under paragraph (2)~~[-]~~;
 - (2) Except as provided in ~~[paragraph (3);]~~ paragraphs (3) and (4), every health maintenance organization shall maintain a minimum net worth equal to the greater of:
 - (A) ~~[\$1,500,000;]~~ \$2,000,000;
 - (B) Two per cent of annual premium revenues as reported on the most recent annual financial statement filed with the commissioner on the first \$150,000,000 of premium revenues and one per cent of annual premium revenues on the premium revenues in excess of \$150,000,000;
 - (C) An amount equal to the sum of three months uncovered health care expenditures as reported on the most recent financial statement filed with the commissioner; or
 - (D) An amount equal to the sum of:
 - (i) Eight per cent of annual health care expenditures except those paid on a capitated basis or managed hospital payment basis as reported on the most recent financial statement filed with the commissioner; and
 - (ii) Four per cent of annual hospital expenditures paid on a managed hospital payment basis as reported on the most recent financial statement filed with the commissioner~~[-]~~;
 - (3) The minimum net worth requirement set forth in paragraph (2)(A) shall be phased in as follows:
 - (A) Seventy-five per cent of the required amount by January 1, 2001; and
 - (B) One hundred per cent of the required amount by December 31, 2002; and
 - ~~[(3)]~~ (4) The following shall apply in determining compliance with the requirements of this subsection:
 - (A) In determining net worth, no debt shall be considered fully subordinated unless the subordination clause is in a form acceptable to the commissioner. Any interest obligation relating to the repayment of any subordinated debt shall be similarly subordinated;
 - (B) The interest expenses relating to the repayment of any fully subordinated debt shall be considered covered expenses; and
 - (C) Any debt incurred by a note meeting the requirements of this section, and otherwise acceptable to the commissioner, shall not be considered a liability and shall be recorded as equity.
- (b) Deposit requirements are as follows:

- (1) Unless otherwise provided below, each health maintenance organization shall deposit with the commissioner or, at the discretion of the commissioner, with any organization or trustee acceptable to the commissioner through which a custodial or controlled account is utilized, cash, securities, or any combination of these or other measures that are acceptable to the commissioner which at all times shall have a value of not less than \$300,000;
 - (2) A health maintenance organization that is in operation on January 1, 1996, shall make a deposit equal to \$150,000. Within one year after January 1, 1996, a health maintenance organization that is in operation on January 1, 1996, shall make an additional deposit of \$150,000 for a total of \$300,000;
 - (3) Deposits shall be an admitted asset of the health maintenance organization in the determination of net worth;
 - (4) All income from deposits shall be an asset of the health maintenance organization. A health maintenance organization that has made a securities deposit may withdraw that deposit or any part thereof after making a substitute deposit of cash, securities, or any combination of these or other measures of equal amount and value. Any securities shall be approved by the commissioner before being deposited or substituted;
 - (5) The deposit shall be used to protect the interests of the health maintenance organization's enrollees and to assure continuation of health care services to enrollees of a health maintenance organization which is in rehabilitation or conservation. The commissioner may use the deposit for administrative costs directly attributable to a receivership or liquidation. If the health maintenance organization is placed in receivership or liquidation, the deposit shall be an asset subject to the provisions of article 15 of chapter 431; and
 - (6) The commissioner may reduce or eliminate the deposit requirement if the health maintenance organization deposits with the director of finance of this State, or the insurance commissioner, or other official body of the state or jurisdiction of domicile of such health maintenance organization, for the protection of all subscribers and enrollees, wherever located, cash, acceptable securities, or surety, and delivers to the commissioner a certificate to such effect, duly authenticated by the appropriate state official holding the deposit.
- (c) Every health maintenance organization, when determining liabilities, shall include an amount estimated in the aggregate to provide for any unearned premium and for the payment of all claims for health care expenditures which have been incurred, whether reported or unreported, which are unpaid and for which the organization is or may be liable, and to provide for the expense of adjustment or settlement of claims. Such liabilities shall be computed in accordance with rules adopted by the commissioner upon reasonable consideration of the ascertained experience and character of the health maintenance organization.
- (d) Every contract between a health maintenance organization and a participating provider of health care services shall be in writing and shall set forth that in the event the health maintenance organization fails to pay for health care services as set forth in the contract, the subscriber or enrollee shall not be liable to the provider for any sums owed by the health maintenance organization. In the event that a contract with a participating provider has not been reduced to writing as required by this subsection or that a contract fails to contain the required prohibition, the participating provider shall not collect or attempt to collect from the subscriber or enrollee sums owed by the health maintenance organization. No participating pro-

vider, or agent, trustee, or assignee thereof, may maintain any action at law against a subscriber or enrollee to collect sums owed by the health maintenance organization.

(e) The commissioner shall require that each health maintenance organization have a plan for handling insolvency which allows for continuation of benefits for the duration of the contract period for which premiums have been paid and continuation of benefits to members who are confined on the date of insolvency in an inpatient facility until their discharge or expiration of benefits. In considering such a plan, the commissioner may require:

- (1) Insurance to cover the expenses to be paid for continued benefits after an insolvency;
- (2) Provisions in provider contracts that obligate the provider to provide services for the duration of the period after the health maintenance organization's insolvency for which premium payment has been made and until the enrollees' discharge from inpatient facilities;
- (3) Insolvency reserves;
- (4) Acceptable letters of credit; or
- (5) Any other arrangements acceptable to the commissioner to assure that benefits are continued as specified above.

(f) An agreement to provide health care services between a provider and a health maintenance organization shall require that a provider shall give the organization at least sixty days' advance notice in the event of termination.

(g) Each health maintenance organization shall prepare for review by the commissioner on or before the forty-fifth day of each quarter, a copy of its quarterly net solvency report verified by at least two principal officers. The commissioner may prescribe the forms on which the reports are to be prepared. Every health maintenance organization shall maintain a copy of its current net solvency report on the premises of its primary place of business. The commissioner may order an examination, subject to article 2 of chapter 431, to determine whether a health maintenance organization is in compliance with this section. Any health maintenance organization that fails or refuses to prepare or produce for review the quarterly net solvency report as required by this subsection shall be liable for a penalty in an amount not less than \$100 and not more than \$500 per day."

SECTION 3. Statutory material to be repealed is bracketed and ~~stricken~~. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 29, 2001.)