

ACT 49

H.B. NO. 1075

A Bill for an Act Relating to Insurance.

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

SECTION 1. Section 431:10H-217.5, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) An insurer shall use the forms in [~~Appendices~~] Appendix B [and F] of the April[,] 2002, NAIC Model Long-Term Care Insurance Model Regulation and Appendix F of the December 2006, NAIC Model Long-Term Care Insurance Model Regulation to comply with the requirements of subsections (b) and (c).”

SECTION 2. Section 431:10H-226.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) An insurer shall provide the information listed in this subsection to the commissioner thirty days prior to making a long-term care insurance form available for sale as follows:

- (1) A copy of the disclosure documents required in section [~~431:10H-221;~~] 431:10H-217.5; and
- (2) An actuarial certification consisting of at least the following:
 - (A) A statement that the initial premium rate schedule is sufficient to cover anticipated costs under moderately adverse experience and that the premium rate schedule is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated;
 - (B) A statement that the policy design and coverage provided have been reviewed and taken into consideration;
 - (C) A statement that the underwriting and claims adjudication processes have been reviewed and taken into consideration;
 - (D) A complete description of the basis for contract reserves that are anticipated to be held under the form, to include:
 - (i) Sufficient detail or sample calculations provided so as to have a complete depiction of the reserve amounts to be held;
 - (ii) A statement that the assumptions used for reserves contain reasonable margins for adverse experience;
 - (iii) A statement that the net valuation premium for renewal years does not increase (except for attained-age rating where permitted); and
 - (iv) A statement that the difference between the gross premium and the net valuation premium for renewal years is sufficient to cover expected renewal expenses; or if [~~such a~~] that statement cannot be made, a complete description of the situations where this does not occur; provided that an aggregate distribution of anticipated issues may be used as long as the underlying gross premiums maintain a reasonably consistent relationship; provided further

that if the gross premiums for certain age groups are inconsistent with this requirement, the commissioner may request a demonstration under subsection (c) based on a standard age distribution; and

- (E) With respect to premium rate schedules:
 - (i) A statement that the premium rate schedule is not less than the premium rate schedule for existing similar policy forms also available from the insurer except for reasonable differences attributable to benefits; or
 - (ii) A comparison of the premium schedules for similar policy forms that are currently available from the insurer with an explanation of the differences.”

SECTION 3. Section 431:10H-229, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Every insurer, health care service plan, or other entity marketing long-term care insurance coverage in this State, directly or through producers, shall:

- (1) Establish marketing procedures to assure that any comparison of policies by its producers will be fair and accurate;
- (2) Establish marketing procedures to assure excessive insurance is not sold or issued;
- (3) Display prominently by type, stamp, or other appropriate means, on the first page of the outline of coverage and policy the following: “Notice to buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations.”;
- (4) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for long-term care insurance currently has long-term care insurance and the types and amounts of any ~~[such]~~ long-term care insurance, except that in the case of qualified long-term care insurance contracts, an inquiry into whether a prospective applicant or enrollee for long-term care insurance has accident and sickness insurance is not required;
- (5) Every insurer or entity marketing long-term care insurance shall establish auditable procedures for verifying compliance with this subsection ~~[(a)]~~;
- (6) If the state in which the policy or certificate is to be delivered or issued for delivery has a senior insurance counseling program approved by the commissioner, the insurer, at solicitation, shall provide written notice to the prospective policyholder or certificate holder of a state senior insurance counseling program including the name, address, and telephone number of the program;
- (7) For long-term care health insurance policies and certificates, use the terms “noncancellable” or “level premium” only when the policy or certificate conforms to section 431:10H-202;
- (8) Provide copies of the disclosure forms required in section 431:10H-217.5(c) to the applicant; and
- (9) Provide an explanation of contingent benefit upon lapse provided for in section 431:10H-233(f)~~[-]~~ and, if applicable, the additional contingent benefit upon lapse provided to policies with fixed or limited premium paying periods in section 431:10H-233(g).”

SECTION 4. Section 431:10H-233, Hawaii Revised Statutes, is amended by amending subsection (o) to read as follows:

“(o) To determine whether contingent nonforfeiture upon lapse provisions are triggered under subsection (f)[;] or (g), a replacing insurer that purchases ~~purchased~~ or assumes ~~otherwise assumed~~ a block or blocks of long-term care insurance policies from another insurer shall calculate the percentage increase based on the initial annual premium paid by the insured when the policy was first purchased from the original insurer.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2009.

(Approved May 6, 2009.)