ACT 70 S.B. NO. 25

A Bill for an Act Relating to Insurance.

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

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to part II of article 2 to be appropriately designated and to read as follows:

"§431:2- Trade name. (a) Prior to the use or change of a trade name to sell, solicit, or negotiate insurance in this State, the licensee shall register the trade name with the department of commerce and consumer affairs pursuant to part II of chapter 482.

(b) Upon registration of the trade name with the department of commerce and consumer affairs, the licensee may apply, on a form approved by the commissioner, to add or remove a trade name on a license. The applicant shall provide proof of registration of a trade name to the commissioner.

(c) If the commissioner finds the application for use or change of a trade name is substantially identical to another trade name registered with the department of commerce and consumer affairs, or substantially identical to a legal name or trade name of a revoked license, the commissioner shall deny use of the trade name on a license issued pursuant to this chapter.

(d) A licensee shall inform the commissioner, by any means acceptable to the commissioner, of any change of status of a trade name registered with the department of commerce and consumer affairs within thirty days of the change."

SECTION 2. Chapter 431, Hawaii Revised Statutes, is amended by adding two new sections to part I of article 10A to be appropriately designated and to read as follows:

"§431:10A-A Required disclaimer. Any limited benefit policy, certificate, application, or sales brochure that provides coverage for accident and sickness, excluding specified disease, long-term care, disability income, accident-only, medicare supplement, dental, or vision shall disclose in a conspicuous manner and in not less than fourteen-point boldface type the following, or substantially similar, statement:

> "THIS IS NOT QUALIFYING HEALTH COVERAGE ("MINIMUM ESSENTIAL COVERAGE") THAT SATISFIES THE HEALTH COVERAGE REQUIREMENT OF THE AFFORDABLE CARE ACT."

§431:10A-B Reimbursement to providers. (a) Coverage for services required by this part shall include reimbursement to health care providers who perform services required by this part, or to the insured member, as appropriate.

(b) Whenever an individual or group policy, contract, plan, or agreement provides for reimbursement for any service, a health care provider who performs a service shall be eligible for reimbursement for the performed service to the extent the health care provider is eligible for such reimbursement under the policy, contract, plan, or agreement, and is acting within the scope of the provider's license or certification under state law.

(c) For purposes of this section, "health care provider" means a provider of services, as defined in title 42 United States Code section 1395x(u); a provider of medical and other health services, as defined in title 42 United States Code section 1395x(s); and a practitioner licensed by the State and working within the practitioner's scope of practice."

SECTION 3. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to part VI of article 10A to be appropriately designated and to read as follows:

"§431:10A-C Limited benefit health insurance. (a) Except as provided in subsection (b) or elsewhere in this article, when used in this article, the terms "accident insurance", "health insurance", or "sickness insurance" shall not include an accident-only; specified disease; hospital indemnity; long-term care; disability; dental; vision; medicare supplement; short-term, limited-duration health insurance; or other limited benefit health insurance contract that pays benefits directly to the insured or the insured's assigns and in which the amount of the benefit paid is not based upon the actual costs incurred by the insured.

(b) When used in sections 431:10A-104, 431:10A-105, 431:10A-106, 431:10A-107, 431:10A-108, 431:10A-109, 431:10A-110, 431:10A-111, 431:10A-112, 431:10A-113, 431:10A-114, 431:10A-117, 431:10A-118, 431:10A-201, 431:10A-202, 431:10A-203, 431:10A-204, 431:10A-205, 431:10A-208, 431:10A-601, 431:10A-602, 431:10A-603, and 431:10A-604, except as otherwise provided, the terms "accident insurance", "accident and health or sickness insurance", "health insurance", or "sickness insurance" shall include an accident-only; specified disease; hospital indemnity; long-term care; disability; dental; vision; medicare supplement; short-term, limited-duration health insurance; or other limited benefit health insurance contract regardless of the manner in which benefits are paid; provided that if any of the requirements in the foregoing sections as applied to long-term care insurance conflict with article 10H, the provisions of article 10H shall govern and control."

SECTION 4. Chapter 432, Hawaii Revised Statutes, is amended by adding a new section to part VI of article 1 to be appropriately designated and to read as follows:

"§432:1- Reimbursement to providers. (a) Coverage for services required by this part shall include reimbursement to health care providers who perform services required by this article, or to the insured member, as appropriate.

(b) Whenever an individual or group policy, contract, plan, or agreement that provides health care coverage under this article provides for reimbursement for any service, a health care provider who performs a service shall be eligible for reimbursement for the performed service to the extent the health care provider is eligible for such reimbursement under the policy, contract, plan, or agreement, and is acting within the scope of the provider's license or certification under state law.

(c) For purposes of this section, "health care provider" has the same meaning as in section 431:10A–B(c)."

SECTION 5. Section 431:3-202, Hawaii Revised Statutes, is amended to read as follows:

"§431:3-202 Insurer's name. (a) Every insurer shall conduct its business in its own legal name.

(b) No insurer shall assume or use a name deceptively similar to that of any other authorized insurer[~~, nor which~~] or a name that tends to deceive or mislead as to the type of organization of the insurer.

(c) An insurer shall apply to the department of commerce and consumer affairs and the commissioner for approval of the use or change of a trade name pursuant to section 431:2- .

[~~(c)~~] (d) When a foreign or an alien insurer authorized to do business in this State wants to change the name under which its certificate of authority is issued, the insurer shall file a request for name change with the commission-

er at least thirty days prior to the effective date of the name change. If within the thirty-day period the commissioner finds the name change request does not meet the requirements of this chapter or of the corporation laws of this State, the commissioner shall send to the insurer written notice of disapproval of the request specifying in what respect the proposed name change fails to meet the requirements of this chapter or the corporation laws of this State and stating that the name change shall not become effective."

SECTION 6. Section 431:5-307, Hawaii Revised Statutes, is amended by amending subsection (o) to read as follows:

"(o)(1) For policies issued on or after the operative date of the valuation manual, the standard prescribed in the valuation manual is the minimum standard of valuation required under subsection (b)(2), except as provided under paragraph (5) or (7) of this subsection;

(2) The operative date of the valuation manual is January 1 of the first calendar year following the first July 1 as of which all of the following have occurred:

(A) The valuation manual has been adopted by the National Association of Insurance Commissioners by an affirmative vote of at least forty-two members, or three-fourths of the members voting, whichever is greater;

(B) The Standard Valuation Law, as amended by the National Association of Insurance Commissioners in 2009, or legislation including substantially similar terms and provisions, has been enacted by states representing greater than seventy-five per cent of the direct premiums written as reported in the following annual statements submitted for 2008: life, accident and health annual statements; health annual statements; or fraternal annual statements; and

(C) The Standard Valuation Law, as amended by the National Association of Insurance Commissioners in 2009, or legislation including substantially similar terms and provisions, has been enacted by at least forty-two of the following fifty-five jurisdictions: the fifty states of the United States, American Samoa, the American Virgin Islands, the District of Columbia, Guam, and Puerto Rico;

(3) Unless a change in the valuation manual specifies a later effective date, changes to the valuation manual shall be effective on January 1 following the date when [~~all of the following have occurred:~~

~~(A)~~ ~~The~~] the change to the valuation manual has been adopted by the National Association of Insurance Commissioners by an affirmative vote representing:

[~~(i)~~] (A) At least three-fourths of the members of the National Association of Insurance Commissioners voting, but not less than a majority of the total membership; and

[~~(ii)~~] (B) Members of the National Association of Insurance Commissioners representing jurisdictions totaling greater than seventy-five per cent of the direct premiums written as reported in the following annual statements most recently available prior to the vote in [~~clause (i):~~] subparagraph (A): life, accident and health annual statements; health annual statements; or fraternal annual statements; [~~and~~

~~(B) The valuation manual becomes effective pursuant to rules adopted by the commissioner;~~]

(4) The valuation manual shall specify all of the following:
(A) Minimum valuation standards for and definitions of the policies or contracts subject to subsection (b)(2). These minimum valuation standards shall be:
(i) The commissioner's reserve valuation method for life insurance contracts, other than annuity contracts, subject to subsection (b)(2);
(ii) The commissioner's annuity reserve valuation method for annuity contracts subject to subsection (b)(2); and
(iii) Minimum reserves for all other policies or contracts subject to subsection (b)(2);
(B) Which policies or contracts or types of policies or contracts that are subject to the requirements of a principle-based valuation in subsection (p)(1) and the minimum valuation standards consistent with those requirements;
(C) For policies and contracts subject to a principle-based valuation under subsection (p):
(i) Requirements for the format of reports to the commissioner under subsection (p)(2)(C) that shall include information necessary to determine if the valuation is appropriate and in compliance with this section;
(ii) Assumptions shall be prescribed for risks over which the company does not have significant control or influence; and
(iii) Procedures for corporate governance and oversight of the actuarial function, and a process for appropriate waiver or modification of such procedures;
(D) For policies not subject to a principle-based valuation under subsection (p), the minimum valuation standard shall either:
(i) Be consistent with the minimum standard of valuation prior to the operative date of the valuation manual; or
(ii) Develop reserves that quantify the benefits and guarantees, and the funding, associated with the contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring;
(E) Other requirements including but not limited to those relating to reserve methods, models for measuring risk, generation of economic scenarios, assumptions, margins, use of company experience, risk measurement, disclosure, certifications, reports, actuarial opinions and memorandums, transition rules, and internal controls; and
(F) The data and form of the data required under subsection (q), with whom the data shall be submitted, and may specify other requirements including data analyses and reporting of analyses;
(5) [~~In the absence of~~] Absent a specific valuation requirement, or if a specific valuation requirement in the valuation manual is not, in the opinion of the commissioner, in compliance with this section, then the company shall, with respect to these requirements, comply with minimum valuation standards prescribed by the commissioner by rule;
(6) The commissioner may engage a qualified actuary, at the expense of the company, to perform an actuarial examination of the com-

pany and opine on the appropriateness of any reserve assumption or method used by the company, or to review and opine on a company's compliance with any requirement set forth in this section. The commissioner may rely upon the opinion[~~,~~] regarding provisions contained within this section[~~,~~] of a qualified actuary engaged by the commissioner of another state, district, or territory of the United States. As used in this paragraph, "engage" includes employment and contracting; and

(7) The commissioner may require a company to change any assumption or method that[~~,~~ in the opinion of the commissioner[~~,~~] is necessary to comply with the requirements of the valuation manual or this section, and the company shall adjust the reserves as required by the commissioner. The commissioner may take other disciplinary action as permitted pursuant to this chapter."

SECTION 7. Section 431:6-101, Hawaii Revised Statutes, is amended by amending the definition of "cash equivalents" to read as follows:

""Cash equivalents" means highly-rated and highly-liquid investments or securities with a remaining term of ninety days or less and rated in the highest short-term category by a nationally recognized statistical rating organization recognized by the SVO. Cash equivalents include government money market mutual funds [~~and class one money market mutual funds~~] defined by the Purposes and Procedures Manual of the SVO, or its successor publication."

SECTION 8. Chapter 431, article 6, Hawaii Revised Statutes, is amended by amending the title of part VI to read as follows:

"[~~]PART VI. INVESTMENT POOLS[~~]"

SECTION 9. Section 431:6-601, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) For purposes of this section:

"Business entity" means a corporation, limited liability company, association, partnership, joint stock company, joint venture, mutual fund trust, or other similar form of business organization, whether organized for-profit or not-for-profit.

[~~"Class one money market mutual funds" means a mutual fund that at all times qualifies for investment using the bond class one reserve factor under the Purposes and Procedures of the SVO or any successor publication.~~]

"Government money market mutual fund" means a money market mutual fund that at all times:

(1) Invests only in obligations issued, guaranteed, or insured by the government of the United States or collateralized repurchase agreements composed of these obligations; and

(2) Qualifies for investment without a reserve under the Purposes and Procedures of the SVO or any successor publication.

"Money market mutual fund" means a mutual fund that meets the conditions of 17 Code of Federal Regulations part 270.2a-7, under the Investment Company Act of 1940 (15 United States Code section 80a-1 et seq.), as amended, or renumbered.

"Obligation" means a bond, note, debenture, trust certificate, including equipment certificate, production payment, negotiable bank certificate of deposit, bankers' acceptance, credit tenant loan, loan secured by financing net leases and other evidence of indebtedness for the payment of money (or participation,

certificates, or other evidence of an interest in any of the foregoing), whether constituting a general obligation of the issuer or payable only out of certain revenues or certain funds pledged or otherwise dedicated for payment.

"Qualified bank" means a national bank, state bank, or trust company that at all times is no less than adequately capitalized as determined by the standards adopted by the United States banking regulators and that is either regulated by state banking laws or is a member of the Federal Reserve System.

"Repurchase transaction" means a transaction in which an insurer purchases securities from a business entity that is obligated to repurchase the purchased securities or equivalent securities from the insurer at a specified price, either within a specified period of time or upon demand.

"Reverse repurchase transaction" means a transaction in which an insurer sells securities to a business entity and is obligated to repurchase the sold securities or equivalent securities from the business entity at a specified price, either within a specified period of time or upon demand.

"Securities lending transaction" means a transaction in which securities are loaned by an insurer to a business entity that is obligated to return the loans, securities, or equivalent securities to the insurer, either within a specified period of time or upon demand.

(b) An insurer may acquire investments in investment pools that:

(1) Invest only in:

(A) Obligations that are rated 1 or 2 by the SVO or have an equivalent of an SVO 1 or 2 rating (or, in the absence of a 1 or 2 rating or equivalent rating, the issuer has outstanding obligations with an SVO 1 or 2 or equivalent rating) by a nationally-recognized statistical rating organization recognized by the SVO and have:

(i) A remaining maturity of three hundred ninety-seven days or less or a put that entitles the holder to receive the principal amount of the obligation which put may be exercised through maturity at specified intervals not exceeding three hundred ninety-seven days; or

(ii) A remaining maturity of three years or less and a floating interest rate that resets no less frequently than quarterly on the basis of a current short-term index (federal funds, prime rate, treasury bills, London InterBank Offered Rate or commercial paper) and is subject to no maximum limit, if the obligations do not have an interest rate that varies inversely to market interest rate changes;

(B) Government money market mutual funds [~~or class one money market mutual funds~~]; or

(C) Securities lending, repurchase, and reverse repurchase transactions that meet all the requirements of section 431:6-318; or

(2) Invest only in investments which an insurer may acquire under this article, if the insurer's proportionate interest in the amount invested in these investments does not exceed the applicable limits of this article."

SECTION 10. Section 431:9-203, Hawaii Revised Statutes, is amended to read as follows:

"§431:9-203 General qualifications for license. (a) For the protection of the public, the commissioner shall not issue or extend any license for an adjuster or independent bill reviewer:

(1) Except as provided by this article; or

(2) To any individual less than eighteen years of age.

(b) An applicant for a license under this article shall notify the commissioner of the applicant's legal name [~~and trade name, if applicable. An applicant doing business under any name other than [the] applicant's legal name shall notify the commissioner prior to using the assumed name~~].

(c) An applicant shall apply to the department of commerce and consumer affairs and the commissioner for approval of the use of a trade name pursuant to section 431:2- .

[~~(c)~~] (d) A licensee shall:

(1) Inform the commissioner by any means acceptable to the commissioner of any change of status within thirty days of the change; [~~and~~]

(2) Report any change of status to the business registration division if the licensee is a business entity registered with the department of commerce and consumer affairs pursuant to title 23 or title 23A, or if the licensee has registered a trade name pursuant to part II of chapter 482[~~.~~]; and

(3) Apply to the department of commerce and consumer affairs and the commissioner for approval to change the status of a trade name pursuant to section 431:2- .

Failure to timely inform the commissioner or business registration division of a change of status shall result in a penalty pursuant to section 431:2-203.

[~~(d)~~] (e) As used in this section, "change of status" includes but shall not be limited to change of legal name, assumed name, trade name, business address, home address, mailing address, business phone number, business fax number, business electronic mail address, business website address, or home phone number."

SECTION 11. Section 431:9A-102, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

""Assumed name" means any fictitious, alias, maiden, or trade name used in the past.

"Trade name" means any name used by an insurance producer to solicit insurance business in this State if the true legal name of an individual or a business entity cannot be used."

SECTION 12. Section 431:9A-110, Hawaii Revised Statutes, is amended to read as follows:

"§431:9A-110 Legal, trade, and assumed names. (a) Every insurance producer doing business in this State shall notify the commissioner in writing of the insurance producer's legal name [~~and trade name, if applicable.~~

~~(b) An insurance producer doing business under any name other than the producer's legal name shall notify the commissioner in writing prior to using the assumed name~~].

(b) An insurance producer shall apply to the department of commerce and consumer affairs and the commissioner for approval of the use or change of a trade name pursuant to section 431:2- .

(c) An insurance producer doing business under any assumed name, other than the producer's legal name, shall notify the commissioner in a form prescribed by the commissioner."

SECTION 13. Section 431:9N-102, Hawaii Revised Statutes, is amended to read as follows:

"§431:9N-102 License denial, nonrenewal, suspension, or revocation[.]; trade name bar. In addition to the authority granted by section 431:9A-112, the commissioner may deny, place on probation, suspend, revoke, or refuse to issue or renew a bail agent's license, may permanently retire or bar subsequent use of a trade name, and may levy a civil fine or penalty in accordance with articles 2 and 9A, or take any combination of these actions, for any of the following causes:

(1) Failure to satisfy, pay, or otherwise discharge a bail forfeiture judgment after the bail agent's name is on the board for more than forty-five consecutive days for the same forfeiture;

(2) Failure to satisfy, pay, or otherwise discharge a final, nonappealable bail forfeiture judgment within sixty days following notice of entry of judgment;

(3) Failure to report, to preserve without use and retain separately, or to return collateral received as security on any bond to the principal or depositor of the collateral;

(4) Failure to pay a final, nonappealable judgment award for failure to return or repay collateral received to secure a bond;

(5) Continuing execution of bail bonds in any court in this State while on the board, where the bail forfeiture judgment that resulted in placement on the board has not been paid, stayed, vacated, exonerated, or otherwise discharged; or

(6) Payment, directly or indirectly, of any commission, service fee, brokerage, or other valuable consideration to any person selling, soliciting, or negotiating bail within this State unless, at the time the services were performed, the person was duly licensed for the performance of the services."

SECTION 14. Section 431:10-104, Hawaii Revised Statutes, is amended to read as follows:

"§431:10-104 General readability requirements. In addition to any other requirements of law, no contract shall be delivered or issued for delivery in this State unless:

(1) The text is in plain language[, achieving] and achieves a minimum score of forty on the Flesch reading ease test or an equivalent score on any other comparable test prescribed by the commissioner under section 431:10-105(a);

(2) The contract is printed, except for specification pages, schedules, and tables, in not less than ten-point type[, one point leaded];

(3) The style, arrangement, and general appearance of the contract give no undue prominence to any endorsements, riders, or other portions of the text; and

(4) A table of contents or an index of principal sections is provided with the contract when the text consists of more than three thousand words printed on three or less pages or when the text has more than three pages, regardless of the total number of printed words[; and

(5) For any short-term health insurance policies that impose preexisting conditions provisions, any policy, application, or sales brochure shall disclose in a conspicuous manner in not less than fourteen point bold face type the following statement:

"THIS POLICY EXCLUDES COVERAGE FOR CONDITIONS FOR WHICH MEDICAL ADVICE, DIAGNOSIS, CARE, OR TREATMENT WAS RECOMMENDED OR RE-

~~CEIVED DURING THE [insert exclusion period] IMMEDIATELY PRECEDING THE EFFECTIVE DATE OF COVERAGE~~]."

SECTION 15. Section 431:10A-116, Hawaii Revised Statutes, is amended to read as follows:

"§431:10A-116 Coverage for specific services. Every person insured under a policy of accident and health or sickness insurance delivered or issued for delivery in this State shall be entitled to the reimbursements and coverages specified below:

(1) Notwithstanding any provision to the contrary, whenever a policy, contract, plan, or agreement provides for reimbursement for any visual or optometric service, which is within the lawful scope of practice of a duly licensed optometrist, the person entitled to benefits or the person performing the services shall be entitled to reimbursement whether the service is performed by a licensed physician or by a licensed optometrist. Visual or optometric services shall include eye or visual examination, or both, or a correction of any visual or muscular anomaly, and the supplying of ophthalmic materials, lenses, contact lenses, spectacles, eyeglasses, and appurtenances thereto;

(2) Notwithstanding any provision to the contrary, for all policies, contracts, plans, or agreements issued on or after May 30, 1974, whenever provision is made for reimbursement or indemnity for any service related to surgical or emergency procedures, which is within the lawful scope of practice of any practitioner licensed to practice medicine in this State, reimbursement or indemnification under the policy, contract, plan, or agreement shall not be denied when the services are performed by a dentist acting within the lawful scope of the dentist's license;

(3) Notwithstanding any provision to the contrary, whenever the policy provides reimbursement or payment for any service, which is within the lawful scope of practice of a psychologist licensed in this State, the person entitled to benefits or performing the service shall be entitled to reimbursement or payment, whether the service is performed by a licensed physician or licensed psychologist;

(4) Notwithstanding any provision to the contrary, each policy, contract, plan, or agreement issued on or after February 1, 1991, except for policies that only provide coverage for specified diseases or other limited benefit coverage, but including policies issued by companies subject to chapter 431, article 10A, part II and chapter 432, article 1 shall provide coverage for screening by low-dose mammography for occult breast cancer as follows:

(A) For women forty years of age and older, an annual mammogram; and

(B) For a woman of any age with a history of breast cancer or whose mother or sister has had a history of breast cancer, a mammogram upon the recommendation of the woman's physician.

The services provided in this paragraph are subject to any coinsurance provisions that may be in force in these policies, contracts, plans, or agreements.

For the purpose of this paragraph, the term "low-dose mammography" means the x-ray examination of the breast using equipment dedicated specifically for mammography, including but not limited to the x-ray tube, filter, compression device, screens, films,

and cassettes, with an average radiation exposure delivery of less than one rad mid-breast, with two views for each breast. An insurer may provide the services required by this paragraph through contracts with providers; provided that the contract is determined to be a cost-effective means of delivering the services without sacrifice of quality and meets the approval of the director of health; and

(5) (A) (i) Notwithstanding any provision to the contrary, whenever a policy, contract, plan, or agreement provides coverage for the children of the insured, that coverage shall also extend to the date of birth of any newborn child to be adopted by the insured; provided that the insured gives written notice to the insurer of the insured's intent to adopt the child prior to the child's date of birth or within thirty days after the child's birth or within the time period required for enrollment of a natural born child under the policy, contract, plan, or agreement of the insured, whichever period is longer; provided further that if the adoption proceedings are not successful, the insured shall reimburse the insurer for any expenses paid for the child; and

(ii) Where notification has not been received by the insurer prior to the child's birth or within the specified period following the child's birth, insurance coverage shall be effective from the first day following the insurer's receipt of legal notification of the insured's ability to consent for treatment of the infant for whom coverage is sought; and

(B) When the insured is a member of a health maintenance organization [~~(HMO)~~], coverage of an adopted newborn is effective:

(i) From the date of birth of the adopted newborn when the newborn is treated from birth pursuant to a provider contract with the health maintenance organization, and written notice of enrollment in accord with the health maintenance organization's usual enrollment process is provided within thirty days of the date the insured notifies the health maintenance organization of the insured's intent to adopt the infant for whom coverage is sought; or

(ii) From the first day following receipt by the health maintenance organization of written notice of the insured's ability to consent for treatment of the infant for whom coverage is sought and enrollment of the adopted newborn in accord with the health maintenance organization's usual enrollment process if the newborn has been treated from birth by a provider not contracting or affiliated with the health maintenance organization[~~; and~~

~~(6) Notwithstanding any provision to the contrary, any policy, contract, plan, or agreement issued or renewed in this State shall provide reimbursement for services provided by advanced practice registered nurses licensed pursuant to chapter 457. Services rendered by advanced practice registered nurses are subject to the same policy limitations generally applicable to health care providers within the policy, contract, plan, or agreement~~]."

SECTION 16. Section 431:10A-116.6, Hawaii Revised Statutes, is amended to read as follows:

"§431:10A-116.6 Contraceptive services. (a) Notwithstanding any provision of law to the contrary, each employer group accident and health or sickness policy, contract, plan, or agreement issued or renewed in this State on or after January 1, 2000, shall cease to exclude contraceptive services or supplies for the subscriber or any dependent of the subscriber who is covered by the policy, subject to the exclusion under section 431:10A-116.7 and the exclusion under section [~~431:10A-102.5.~~] 431:10A-C.

(b) Except as provided in subsection (c), all policies, contracts, plans, or agreements under subsection (a)[~~,~~] that provide contraceptive services or supplies[~~,~~] or prescription drug coverage[~~,~~] shall not exclude any prescription contraceptive supplies or impose any unusual copayment, charge, or waiting requirement for such supplies.

(c) Coverage for oral contraceptives shall include at least one brand from the monophasic, multiphasic, and the progestin-only categories. A member shall receive coverage for any other oral contraceptive only if:

(1) Use of brands covered has resulted in an adverse drug reaction; or

(2) The member has not used the brands covered and, based on the member's past medical history, the prescribing health care provider believes that use of the brands covered would result in an adverse reaction.

(d) Coverage required by this section shall include reimbursement to a prescribing health care provider or dispensing entity for prescription contraceptive supplies intended to last for up to a twelve-month period for an insured.

[~~(e) Coverage required by this section shall include reimbursement to a prescribing and dispensing pharmacist who prescribes and dispenses contraceptive supplies pursuant to section 461-11.6.~~

~~(f)~~] (e) For purposes of this section:

"Contraceptive services" means physician-delivered, physician-supervised, physician assistant-delivered, advanced practice registered nurse-delivered, nurse-delivered, or pharmacist-delivered medical services intended to promote the effective use of contraceptive supplies or devices to prevent unwanted pregnancy.

"Contraceptive supplies" means all United States Food and Drug Administration-approved contraceptive drugs or devices used to prevent unwanted pregnancy.

[~~(g)~~] (f) Nothing in this section shall be construed to extend the practice or privileges of any health care provider beyond that provided in the laws governing the provider's practice and privileges."

SECTION 17. Section 431:10A-118.3, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) As used in this section unless the context requires otherwise:

"Actual gender identity" means a person's internal sense of being male, female, a gender different from the gender assigned at birth, a transgender person, or neither male nor female.

"Gender transition" means the process of a person changing the person's outward appearance or sex characteristics to accord with the person's actual gender identity.

"Perceived gender identity" means an observer's impression of another person's actual gender identity or the observer's own impression that the person is male, female, a gender different from the gender [~~designed~~] assigned at birth, a transgender person, or neither male nor female.

"Transgender person" means a person who has gender identity disorder or gender dysphoria, has received health care services related to gender transi-

tion, adopts the appearance or behavior of the opposite sex, or otherwise identifies as a gender different from the gender assigned to that person at birth."

SECTION 18. Section 431:14-104, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a) and (b) to read:

"(a) Every insurer shall file with the commissioner every manual of classifications, rules, and rates, every rating plan, every other rating rule, and every modification of any of the foregoing that it proposes to use; provided that filings with regard to specific inland marine risks, which by general custom of the business are not written according to manual rate or rating plans, and bail bonds, subject to section 804-62, shall not be required pursuant to this subsection.

Every filing shall:

(1) State its proposed effective date;

(2) Indicate the character and extent of the coverage contemplated;

(3) Include a report on investment income; and

(4) Be accompanied by a $50 fee[~~, payable to the commissioner,~~] to be deposited in the commissioner's education and training fund.

(b) [~~For each~~] Each filing[~~, an insurer~~] shall [~~submit~~] be submitted to the commissioner[~~:~~

~~(1) An electronic copy of the filing; or~~

~~(2) Two printed copies of the filing.~~

~~The commissioner may also request a printed version of an electronic filing to be submitted pursuant to paragraph (1).~~] via the National Association of Insurance Commissioners' System for Electronic Rates and Forms Filing or an equivalent service approved by the commissioner."

2. By amending subsection (k) to read:

"(k) The following rates shall become effective when filed:

(1) Specific inland marine [~~rates~~] rate filings on risks specially rated by a rating organization or an advisory organization;

(2) Any special filing with respect to a surety or guaranty bond required by law [~~or by~~], court or executive order, or [~~by~~] order or rule of a public body, not covered by a previous filing; and

(3) Any special filing with respect to any class of insurance, subdivision, or combination thereof that is subject to individual risk premium modification and has been agreed to by an insured under a formal or an informal bid process.

The filed rates shall be deemed [~~to meet the requirements of this article until the time the commissioner reviews the filing and~~] approved so long as the filing remains in effect."

SECTION 19. Section 431:14-104.5, Hawaii Revised Statutes, is amended to read as follows:

"§431:14-104.5 Loss cost filings. When required by the commissioner, the rating organization or advisory organization shall file for approval all prospective loss costs, [~~and all~~] supplementary rating information, and every change [~~or~~], amendment, or modification [~~of any of the foregoing~~] thereto proposed for use in this State. The filings shall be subject to [~~section~~] sections 431:14-104 [~~and section~~], 431:14-105, and 431:14-106 and other provisions of article 14 relating to filings made by insurers."

SECTION 20. Section 431:14-105, Hawaii Revised Statutes, is amended to read as follows:

"**§431:14-105 Policy revisions that alter coverage.** (a) Any policy revisions that alter coverage in any manner shall be filed with the commissioner and shall include an analysis of the impact [~~of~~] each revision has on rates[~~.~~

~~(b) A filing shall consist of either:~~

~~(1) An electronic copy of the filing; or~~

~~(2) Two printed copies of the filing.~~

~~The commissioner may also request a printed version of an electronic filing to be submitted pursuant to paragraph (1).~~] or loss costs.

[~~(c)~~] (b) After review by the commissioner, the commissioner shall determine whether a rate filing for the policy revision must be submitted in accordance with section 431:14-104."

SECTION 21. Section 431:14-108, Hawaii Revised Statutes, is amended to read as follows:

"**§431:14-108 Deviations.** (a) Except for those lines of insurance for which the commissioner determines [~~that~~] individual rate filings shall be made, every member of or subscriber to a rating organization shall adhere to the filings the organization made on its behalf [~~by the organization, except that~~]; provided that any insurer may [~~make written application~~] submit a rate filing to the commissioner to file a deviation from the class rates, schedules, rating plans, or rules respecting any class of insurance, [~~or~~] class of risk within a class of insurance, or combination thereof. The [~~application~~] rate filing shall specify the basis for the deviation and shall be accompanied by the data upon which the applicant relies. [~~A~~] The filer shall simultaneously send a copy of the [~~application~~] deviation and data [~~shall be sent simultaneously~~] to the rating organization.

[~~(b) The commissioner shall set a time and place for a hearing at which the insurer and the rating organization may be heard, and shall give them not less than ten days' written notice thereof. In the event the commissioner is advised by the rating organization that it does not desire a hearing, the commissioner may, upon the consent of the applicant, waive the hearing.~~

~~(c)~~] (b) In considering the [~~application to file a~~] deviation, the commissioner shall [~~give consideration to~~] consider the available statistics and the principles for ratemaking [~~as provided~~] in section 431:14-103. The commissioner shall [~~issue an order permitting~~] approve the filing of the deviation [~~to be filed~~] if the commissioner finds that it [~~to be~~] is justified. The deviation shall become effective upon [~~issuance of~~] the commissioner's [~~order.~~] approval of the proposed effective date of the filing. The commissioner shall [~~issue an order denying~~] disapprove the [~~application~~] rate filing if the commissioner finds [~~that~~] the deviation is not justified or [~~that~~] the resulting premiums would be excessive, inadequate, or unfairly discriminatory. Each deviation [~~permitted to be~~] filed shall be effective for a period of one year from the date of [~~the order~~] approval, unless terminated sooner with [~~the~~] approval [~~of~~] by the commissioner."

SECTION 22. Section 431:14G-105, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Every managed care plan shall file with the commissioner every rate, charge, classification, schedule, practice, or rule and every modification of any of the foregoing that it proposes to use. Every filing shall:

(1) State its proposed effective date;

(2) Indicate the character and extent of the coverage contemplated;

(3) Include a report on investment income; and

(4) Be accompanied by a $50 fee [~~payable to the commissioner which shall~~] to be deposited in the commissioner's education and training fund.

(b) [~~For each~~] Each filing[~~, an insurer~~] shall [~~submit~~] be submitted to the commissioner[~~:~~

~~(1) An electronic copy of the filing; or~~

~~(2) Two printed copies of the filing;~~

~~provided that the commissioner may request an insurer that submits an electronic copy of the filing pursuant to paragraph (1) to also submit a printed copy of the electronic filing.~~] via the National Association of Insurance Commissioners' System for Electronic Rates and Forms Filing or an equivalent service approved by the commissioner."

SECTION 23. Section 431:19-103, Hawaii Revised Statutes, is amended to read as follows:

"§431:19-103 Names of companies. (a) No captive insurance company shall adopt a name that is the same, deceptively similar, or likely to be confused with or mistaken for any other existing business name registered in the State[~~, except that the commissioner may allow a branch captive insurance company to be licensed in this State under a different trade name if the normal name of the branch captive insurance company is not available for use in this State~~].

(b) A captive insurance company shall apply to the department of commerce and consumer affairs and the commissioner for approval of the use or change of a trade name pursuant to section 431:2- ."

SECTION 24. Section 431:19-115, Hawaii Revised Statutes, is amended to read as follows:

"§431:19-115 Laws applicable. (a) No insurance laws of this State other than those contained in this article, [~~or contained in specific references contained in this section or article,~~] article 15, or specifically referenced in this article shall apply to captive insurance companies[~~.~~]; provided that:

[~~(b)~~] (1) Sections 431:3-302 to 431:3-304.5, 431:3-307, 431:3-401 to 431:3-409, 431:3-411, 431:3-412, and 431:3-414; articles 1, 2, 4A, 5, 6, 9A, 9B, 9C, 11, and 11A[~~, and 15~~]; and chapter 431K shall apply to risk retention captive insurance companies[~~.~~]; and

[~~(c)~~] (2) Articles 1, 2, and 6[~~, and 15~~] shall apply to class 5 companies.

[~~(d)~~] (b) If any of the laws specified in this section are inconsistent with this article, this article shall apply unless the commissioner by rule or order determines otherwise on a case-by-case basis.

[~~(e)~~] (c) The application of the foregoing provisions shall not diminish the commissioner's authority for exemption as may be contained therein or as may be deemed appropriate under the circumstances."

SECTION 25. Section 431:26-103, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) A health carrier shall meet the following access plan requirements:

(1) Beginning on July 1, 2017, a health carrier shall file with the commissioner for approval, prior to or at the time it files a newly offered network plan, in a manner and form defined by rule or order of the commissioner, an access plan that meets the requirements of this article;

(2) The health carrier may request the commissioner to deem sections of the access plan as proprietary, competitive, or trade secret information that shall not be made public. Information is proprietary, competitive, or a trade secret if disclosure of the information would cause the health carrier's competitors to obtain valuable business information. The health carrier shall make the access plans, ab-

sent proprietary, competitive, or trade secret information, available online, at the health carrier's business premises, and to any person upon request; and

(3) The health carrier shall prepare an access plan prior to offering a new network plan and shall notify the commissioner of any material change to any existing network plan within fifteen business days after the change occurs. The carrier shall include in the notice to the commissioner a reasonable time frame within which the carrier will submit to the commissioner for approval or file with the commissioner, as appropriate, an update to an existing access plan."

SECTION 26. Section 431:26-104, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) Selection standards shall be developed pursuant to the following:

(1) Health carrier selection standards for selecting and tiering, as applicable, participating providers shall be developed for providers and each health care professional specialty;

(2) The standards shall be used in determining the selection of participating providers by the health carrier and the intermediaries with which the health carrier contracts. The standards shall meet requirements relating to health care professional credentialing verification developed by the commissioner <u>by order or</u> through rules adopted pursuant to chapter 91;

(3) Selection criteria shall not be established in a manner:

(A) That would allow a health carrier to discriminate against high risk populations by excluding providers because the providers are located in geographic areas that contain populations or providers presenting a risk of higher than average claims, losses, or health care services utilization;

(B) That would exclude providers because the providers treat or specialize in treating populations presenting a risk of higher than average claims, losses, or health care services utilization; or

(C) That would discriminate with respect to participation under the health benefit plan against any provider who is acting within the scope of the provider's license or certification under applicable state law or regulations; provided that this subparagraph shall not be construed to require a health carrier to contract with any provider who is willing to abide by the terms and conditions for participation established by the carrier;

(4) Notwithstanding paragraph (3), a carrier shall not be prohibited from declining to select a provider who fails to meet the other legitimate selection criteria of the carrier developed in compliance with this article; and

(5) This article does not require a health carrier, its intermediaries, or the provider networks with which the carrier and its intermediaries contract, to employ specific providers acting within the scope of the providers' license or certification under applicable state law that may meet the selection criteria of the carrier, or to contract with or retain more providers acting within the scope of the providers' license or certification under applicable state law than are necessary to maintain a sufficient provider network."

SECTION 27. Section 431:30-112, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) A compacting state may opt out of a uniform standard, either by legislation or by rule adopted by the insurance commissioner. If a compacting state elects to opt out of a uniform standard by rule, it shall:

(1) Give written notice to the commission no later than ten business days after the later of the adoption of the uniform standard or the state becoming a compacting state; and

(2) Find that the uniform standard does not provide reasonable protections to the citizens of the state, given the conditions in the state. The commissioner shall make specific findings of fact and conclusions of law, based on a preponderance of the evidence, detailing the conditions in the state that warrant a departure from the uniform standard and determining that the uniform standard would not reasonably protect the citizens of the state. The commissioner shall consider and balance the following factors and find that the conditions in the state and needs of the citizens of the state outweigh:

(A) The intent of the legislature to participate in, and reap the benefits of, an interstate agreement to establish national uniform consumer protections for the products subject to this article; and

(B) The presumption that a uniform standard adopted by the commission provides reasonable protections to consumers of the relevant product.

Notwithstanding the foregoing, a compacting state may, at the time of its enactment of this compact, prospectively opt out of all uniform standards involving long-term care insurance products by expressly providing for such opt out in the enacted compact, and such an opt out shall not be treated as a material variance in the offer or acceptance of any state to participate in this compact. An opt out pursuant to this section shall be effective at the time of enactment of this compact by the compacting state and shall apply to all existing uniform standards involving long-term care insurance products and those subsequently adopted[~~; and~~

~~(3) In accordance with the provisions of paragraph (2), this State does prospectively opt out of all uniform standards involving long-term care insurance products promulgated by the commission, as this State has previously enacted article 10H providing additional standards for federal conformity and universal availability for reciprocal beneficiary and multi-generation populace which facilitates flexibility and innovation in the development of long-term care insurance coverage~~]."

SECTION 28. Section 432:1-604.5, Hawaii Revised Statutes, is amended to read as follows:

"§432:1-604.5 Contraceptive services. (a) Notwithstanding any provision of law to the contrary, each employer group health policy, contract, plan, or agreement issued or renewed in this State on or after January 1, 2000, shall cease to exclude contraceptive services or supplies, and contraceptive prescription drug coverage for the subscriber or any dependent of the subscriber who is covered by the policy, subject to the exclusion under section 431:10A-116.7.

(b) Except as provided in subsection (c), all policies, contracts, plans, or agreements under subsection (a), that provide contraceptive services or supplies[~~,~~] or prescription drug coverage[~~,~~] shall not exclude any prescription contraceptive

supplies or impose any unusual copayment, charge, or waiting requirement for such drug or device.

(c) Coverage for contraceptives shall include at least one brand from the monophasic, multiphasic, and the progestin-only categories. A member shall receive coverage for any other oral contraceptive only if:

(1) Use of brands covered has resulted in an adverse drug reaction; or

(2) The member has not used the brands covered and, based on the member's past medical history, the prescribing health care provider believes that use of the brands covered would result in an adverse reaction.

(d) Coverage required by this section shall include reimbursement to a prescribing health care provider or dispensing entity for prescription contraceptive supplies intended to last for up to a twelve-month period for a member.

[~~(e) Coverage required by this section shall include reimbursement to a prescribing and dispensing pharmacist who prescribes and dispenses contraceptive supplies pursuant to section 461-11.6.~~

~~(f)~~] (e) For purposes of this section:

"Contraceptive services" means physician-delivered, physician-supervised, physician assistant-delivered, advanced practice registered nurse-delivered, nurse-delivered, or pharmacist-delivered medical services intended to promote the effective use of contraceptive supplies or devices to prevent unwanted pregnancy.

"Contraceptive supplies" means all Food and Drug Administration-approved contraceptive drugs or devices used to prevent unwanted pregnancy.

[~~(g)~~] (f) Nothing in this section shall be construed to extend the practice or privileges of any health care provider beyond that provided in the laws governing the provider's practice and privileges."

SECTION 29. Section 432:1-607.3, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) As used in this section unless the context requires otherwise:

"Actual gender identity" means a person's internal sense of being male, female, a gender different from the gender assigned at birth, a transgender person, or neither male nor female.

"Gender transition" means the process of a person changing the person's outward appearance or sex characteristics to accord with the person's actual gender identity.

"Perceived gender identity" means an observer's impression of another person's actual gender identity or the observer's own impression that the person is male, female, a gender different from the gender [~~designed~~] assigned at birth, a transgender person, or neither male nor female.

"Transgender person" means a person who has gender identity disorder or gender dysphoria, has received health care services related to gender transition, adopts the appearance or behavior of the opposite sex, or otherwise identifies as a gender different from the gender assigned to that person at birth."

SECTION 30. Section 432D-26.3, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) As used in this section unless the context requires otherwise:

"Actual gender identity" means a person's internal sense of being male, female, a gender different from the gender assigned at birth, a transgender person, or neither male nor female.

"Gender transition" means the process of a person changing the person's outward appearance or sex characteristics to accord with the person's actual gender identity.

"Perceived gender identity" means an observer's impression of another person's actual gender identity or the observer's own impression that the person is male, female, a gender different from the gender [~~designed~~] assigned at birth, a transgender person, or neither male nor female.

"Transgender person" means a person who has gender identity disorder or gender dysphoria, has received health care services related to gender transition, adopts the appearance or behavior of the opposite sex, or otherwise identifies as a gender different from the gender assigned to that person at birth."

SECTION 31. Section 431:10A-102.5, Hawaii Revised Statutes, is repealed.

SECTION 32. Section 432:1-611, Hawaii Revised Statutes, is repealed.

SECTION 33. Sections 431:10A-132, 431:10A-134, 431:10A-140, 431:26-102, 431S-1, 432:1-613, and 432:1-620, Hawaii Revised Statutes, are amended by substituting the section number 431:10A-C, substituting the appropriate section number for the letter used in designating the new section, pursuant to section 34 of this Act, wherever the section number 431:10A-102.5 appears.

SECTION 34. In codifying the new sections added by sections 2 and 3 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 35. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.[1]

SECTION 36. This Act shall take effect on July 1, 2019; provided that:

(1) Sections 1, 5, 10, 11, 12, 13, and 23 shall take effect on October 1, 2019; and

(2) On July 1, 2024, sections 25 and 26 shall be repealed and sections 431:26-103(e) and 431:26-104(f), Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the effective date of this Act.

(Approved June 7, 2019.)

Note

1. Edited pursuant to HRS §23G-16.5.