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 article 10A to be appropriately designated and to read as follows:

"§431:10A- Prohibition on rescissions of coverage. (a) Notwithstanding sections 431:10-226.5 and 431:10A-106 to the contrary, a group health plan or health insurance insurer shall not rescind coverage under a health benefit plan with respect to an individual, including a group to which the individual belongs or family coverage in which the individual is included, after the individual is covered under the plan, unless:

(1) The individual or a person seeking coverage on behalf of the individual performs an act, practice, or omission that constitutes fraud;

(2) The individual makes an intentional misrepresentation of material fact as prohibited by the terms of the plan or coverage; or

(3) The individual fails to timely pay required premiums or contributions toward the cost of coverage; provided
that the rescission is in compliance with federal
regulations.

As used in this subsection, "a person seeking coverage on
behalf of the individual" shall not include an insurance
producer or employee or authorized representative of the health
carrier.

(b) A health carrier shall provide at least thirty days
advance written notice to each plan enrollee or, for individual
health insurance coverage, to each primary subscriber, who would
be affected by the proposed rescission of coverage before
coverage under the plan may be rescinded in accordance with
subsection (a) regardless of whether, in the case of group
health insurance coverage, the rescission applies to the entire
group or only to an individual within the group.

(c) This section applies regardless of any applicable
contestability period."

SECTION 2. Chapter 432, Hawaii Revised Statutes, is
amended by adding a new section to article 1 to be appropriately
designated and to read as follows:

"§432- Prohibition on rescissions of coverage. (a)
Notwithstanding sections 431:10-226.5 and 431:10A-106 to the
contrary, a society shall not rescind coverage under a health
benefit plan with respect to an individual, including a group to which the individual belongs or family coverage in which the individual is included, after the individual is covered under the plan, unless:

(1) The individual or a person seeking coverage on behalf of the individual performs an act, practice, or omission that constitutes fraud;

(2) The individual makes an intentional misrepresentation of material fact as prohibited by the terms of the plan or coverage; or

(3) The individual fails to timely pay required premiums or contributions toward the cost of coverage; provided that the rescission is in compliance with federal regulations.

As used in this subsection, "a person seeking coverage on behalf of the individual" shall not include an insurance producer or employee or authorized representative of the health carrier.

(b) A society shall provide at least thirty days advance written notice to each plan enrollee or, for individual health insurance coverage, to each primary subscriber, who would be affected by the proposed rescission of coverage before coverage...
under the plan may be rescinded in accordance with subsection
(a) regardless of whether, in the case of group health insurance
coverage, the rescission applies to the entire group or only to
an individual within the group.

(c) This section applies regardless of any applicable
contestability period."

SECTION 3. Chapter 432D, Hawaii Revised Statutes, is
amended by adding a new section to be appropriately designated
and to read as follows:

"§432D— Prohibition on rescissions of coverage. (a)
Notwithstanding sections 431:10-226.5 and 431:10A-106 to the
contrary, a health maintenance organization shall not rescind
coverage under a health benefit plan with respect to an
individual, including a group to which the individual belongs or
family coverage in which the individual is included, after the
individual is covered under the plan, unless:

(1) The individual or a person seeking coverage on behalf
of the individual performs an act, practice, or
omission that constitutes fraud;

(2) The individual makes an intentional misrepresentation
of material fact as prohibited by the terms of the
plan or coverage; or
(3) The individual fails to timely pay required premiums or contributions toward the cost of coverage; provided that the rescission is in compliance with federal regulations.

As used in this subsection, "a person seeking coverage on behalf of the individual" shall not include an insurance producer or employee or authorized representative of the health carrier.

(b) A health maintenance organization shall provide at least thirty days advance written notice to each plan enrollee or, for individual health insurance coverage, to each primary subscriber, who would be affected by the proposed rescission of coverage before coverage under the plan may be rescinded in accordance with subsection (a) regardless of whether, in the case of group health insurance coverage, the rescission applies to the entire group or only to an individual within the group.

(c) This section applies regardless of any applicable contestability period."

SECTION 4. Section 431:1-209, Hawaii Revised Statutes, is amended to read as follows:

"§431:1-209 General casualty insurance defined. General casualty insurance includes vehicle insurance as defined in"
section 431:1-208, and accident and health or sickness insurance
as defined in section 431:1-205[, and in addition is insurance.]
when issued as an incidental coverage with or supplemental to
liability insurance. In addition, general casualty insurance is
insurance:

(1) Against legal liability for the death, injury, or
disability of any human being, or from damage to
property;

(2) Of medical, hospital, surgical, and funeral benefits
to persons injured, irrespective of legal liability of
the insured, when issued with or supplemental to
insurance against legal liability for the death,
injury, or disability of human beings;

(3) Of the obligation accepted by, imposed upon, or
assumed by employers under law for death, disablement,
or injury to employees;

(4) Against loss or damage by burglary, theft, larceny,
robbery, forgery, fraud, vandalism, malicious
mischief, confiscation, or wrongful conversion,
disposal, or concealment, or from any attempt of any
of the foregoing; also insurance against loss or
damage to moneys, coins, bullion, securities, notes,
drafts, acceptances, or any other valuable papers or
documents, resulting from any cause, except while in
the mail;

(5) Upon personal effects of individuals, by an all-risk
type of policy commonly known as the personal property
floater;

(6) Against loss or damage to glass and its appurtenances
resulting from any cause;

(7) Against any liability and loss or damage to property
resulting from accidents to or explosions of boilers,
pipes, pressure containers, machinery, or apparatus;

(8) Against loss of or damage to any property of the
insured resulting from the ownership, maintenance, or
use of elevators, except loss or damage by fire;

(9) Against loss or damage to any property caused by the
breakage or leakage of sprinklers, water pipes, or
containers, or by water entering through leaks or
openings in buildings;

(10) Against loss or damage resulting from failure of
debtors to pay their obligations to the insured
(credit insurance);
(11) Against loss of or damage to any domesticated or wild
animal resulting from any cause (livestock insurance);

(12) Against loss of or damage to any property of the
insured resulting from collision of any other object
with such property, but not including collision to or
by vessels, craft, piers, or other instrumentalities
of ocean or inland navigation (collision insurance);

(13) Against legal liability of the insured, and against
loss, damage, or expense incident to a claim of such
liability, and including any obligation of the insured
to pay medical, hospital, surgical, and funeral
benefits to injured persons, irrespective of legal
liability of the insured, arising out of the death or
injury of any person, or arising out of injury to the
economic interest of any person as the result of
negligence in rendering expert, fiduciary, or
professional service (malpractice insurance);

(14) Against any contract of warranty or guaranty which
promises service maintenance, parts replacement,
repair, money, or any other indemnity in the event of
loss of or damage to a motor vehicle or any part
thereof from any cause, including loss of or damage to
or loss of use of the motor vehicle by reason of
depreciation, deterioration, wear and tear, use,
obsolescence, or breakage if made by a warrantor or
guarantor who or which as such is doing an insurance
business; provided that service contracts, as defined
and meeting the requirements of chapter 481X, shall
not be subject to chapter 431.

The doing or proposing to do any business in
substance equivalent to the business described in this
section in a manner designed to evade the provisions
of this section is the doing of an insurance business;
and

(15) Against any other kind of loss, damage, or liability
properly the subject of insurance and not within any
other class or classes or type of insurance as defined
in sections 431:2-204 to 431:2-211, if such insurance
is not contrary to law or public policy."

SECTION 5. Section 431:2-209, Hawaii Revised Statutes, is
amended by amending subsection (d) to read as follows:
"(d) Three years after the [year to which they relate,]
date filed or within three years of the due date prescribed for
the filing of the tax report, whichever is later, the
commissioner may destroy [any foreign or alien insurer's] the
tax reports[7] of any foreign or alien insurers, surplus lines
brokers, or independently procured insureds, or similar records
or reports now or hereafter in the commissioner's possession."

SECTION 6. Section 431:2-402, Hawaii Revised Statutes, is
amended by amending subsection (c) to read as follows:
"(c) The branch may review and take appropriate action on
complaints [relating to insurance fraud.] of fraud relating to
insurance under title 24, including chapters 431, 432, and 432D,
but excluding workers' compensation insurance under chapter
386."

SECTION 7. Section 431:10A-102.5, Hawaii Revised Statutes,
is amended by amending subsection (b) to read as follows:
"(b) When used in sections 431:10A-104, 431:10A-105,
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, or other
limited benefit health insurance contract regardless of the
manner in which benefits are paid; provided that if any of
the requirements set forth in the foregoing sections as applied
to long-term care insurance conflict with the provisions of
article 10H, the provisions of article 10H shall govern and
control."

SECTION 8. Section 431:11A-101, Hawaii Revised Statutes,
is amended by amending the definition of "licensed insurer" or
"insurer" to read as follows:

"Licensed insurer" or "insurer" means any person, firm,
association, or corporation duly licensed to transact a property
or casualty insurance business in this State. The following are
not licensed insurers for the purposes of this article:

1. All risk retention groups as defined in the Superfund
Amendments Reauthorization Act of 1986, P.L. No. 99-
499, 100 Stat. 1613 (1986), and the Risk Retention
1986), and chapter 431K;

2. All residual market pools and joint underwriting
authorities or associations; and
(2) Captive [insurers] insurance companies as defined in section 431:19-101[-1], other than risk retention captive insurance companies."

SECTION 9. Section 431:19-101, Hawaii Revised Statutes, is amended by amending the definition of "captive insurance company" to read as follows:

""Captive insurance company" or "captive insurer" means a class 1 company, class 2 company, class 3 company, class 4 company, or class 5 company formed or authorized under this article."

SECTION 10. Section 431M-2, Hawaii Revised Statutes, is amended to read as follows:

"§431M-2 Policy coverage. (a) All individual and group accident and health or sickness insurance policies issued in this State, individual or group hospital or medical service plan contracts, and nonprofit mutual benefit society, fraternal benefit society, and health maintenance organization health plan contracts shall include within their hospital and medical coverage the benefits of alcohol [dependence, drug dependence,] use disorder, substance use disorder, and mental [illness] health treatment services [provided in section 431M-4], including services for alcohol dependence and drug dependence,
except that this section shall not apply to insurance policies that are issued solely for single diseases, or otherwise limited, specialized coverage.

(b) The policies and contracts set forth in subsection (a) shall not impose any financial requirements or treatment limitations on mental health or substance use disorder benefits that are more restrictive than the predominant financial requirements and treatment limitations, either quantitative or nonquantitative, imposed on medical and surgical benefits in accordance with the Mental Health Parity and Addiction Equity Act of 2008."

SECTION 11. Section 431M-4, Hawaii Revised Statutes, is amended to read as follows:

"§431M-4 Mental illness, alcohol and drug dependence benefits. [(a)—The covered benefit under this chapter shall not be less than thirty days of in-hospital services per year. Each day of in-hospital services may be exchanged for two days of nonhospital residential services, two days of partial hospitalization services, or two days of day treatment services. Visits to a physician, psychologist, licensed clinical social worker, marriage and family therapist, licensed mental health counselor, or advanced practice registered nurse shall not be...}
less than thirty visits per year to hospital or nonhospital
facilities or to mental health outpatient facilities for day
treatment or partial hospitalization services. Each day of in-
hospital services may also be exchanged for two outpatient
visits under this chapter, provided that the patient's condition
is such that the outpatient services would reasonably preclude
hospitalization. The total covered benefit for outpatient
services in subsection (b) and (c) shall not be less than
twenty-four visits per year; provided that coverage of twelve of
the twenty-four outpatient visits shall apply only to the
services under subsection (c). The other covered benefits under
this chapter shall apply to any of the services in subsection
(b) or (c). In the case of alcohol and drug dependence
benefits, the insurance policy may limit the number of treatment
episodes but may not limit the number to less than two treatment
episodes per lifetime. Nothing in this section shall be
construed to limit serious mental illness benefits.

(b) (a) Alcohol and drug dependence benefits shall be as
follows:

(1) Detoxification services as a covered benefit under
this chapter shall be provided either in a hospital or
in a nonhospital facility that has a written
affiliation agreement with a hospital for emergency, medical, and mental health support services. The following services shall be covered under detoxification services:

(A) Room and board;
(B) Diagnostic x-rays;
(C) Laboratory testing; and
(D) Drugs, equipment use, special therapies, and supplies.

Detoxification services shall be included as part of the covered in-hospital services, but shall not be included in the treatment episode limitation, as specified in subsection-(a);

(2) Alcohol or drug dependence treatment through in-hospital, nonhospital residential, or day treatment substance abuse services as a covered benefit under this chapter shall be provided in a hospital or nonhospital facility. Before a person qualifies to receive benefits under this subsection, a qualified physician, psychologist, licensed clinical social worker, marriage and family therapist, licensed mental health counselor, or advanced practice registered
nurse shall determine that the person suffers from
alcohol or drug dependence, or both; provided that the
substance abuse services covered under this paragraph
shall include those services that are required for
licensure and accreditation [and shall be included as
part of the covered-in-hospital services as specified
in subsection (a)]. Excluded from alcohol or drug
dependence treatment under this subsection are
detoxification services and educational programs to
which drinking or drugged drivers are referred by the
judicial system and services performed by mutual self-
help groups;

(3) Alcohol or drug dependence outpatient services as a
covered benefit under this chapter shall be provided
under an individualized treatment plan approved by a
qualified physician, psychologist, licensed clinical
social worker, marriage and family therapist, licensed
mental health counselor, or advanced practice
registered nurse and shall be services reasonably
expected to produce remission of the patient's
condition. An individualized treatment plan approved
by a marriage and family therapist, licensed mental
health counselor, licensed clinical social worker, or
an advanced practice registered nurse for a patient
already under the care or treatment of a physician or
psychologist shall be done in consultation with the
physician or psychologist. Services covered under
this paragraph shall be included as part of the
covered outpatient services as specified in subsection
(a); and

(4) Substance abuse assessments for alcohol or drug
dependence as a covered benefit under this section for
a child facing disciplinary action under section 302A-
1134.6 shall be provided by a qualified physician,
psychologist, licensed clinical social worker,
advanced practice registered nurse, or certified
substance abuse counselor. The certified substance
abuse counselor shall be employed by a hospital or
nonhospital facility providing substance abuse
services. The substance abuse assessment shall
evaluate the suitability for substance abuse treatment
and placement in an appropriate treatment setting.

[+(e)] (b) Mental illness benefits.
(1) Covered benefits for mental health services set forth in this subsection shall be limited to coverage for diagnosis and treatment of mental disorders. All mental health services shall be provided under an individualized treatment plan approved by a physician, psychologist, licensed clinical social worker, marriage and family therapist, licensed mental health counselor, or advanced practice registered nurse and must be reasonably expected to improve the patient's condition. An individualized treatment plan approved by a licensed clinical social worker, marriage and family therapist, licensed mental health counselor, or an advanced practice registered nurse for a patient already under the care or treatment of a physician or psychologist shall be done in consultation with the physician or psychologist;

(2) In-hospital and nonhospital residential mental health services as a covered benefit under this chapter shall be provided in a hospital or a nonhospital residential facility. The services to be covered shall include those services required for licensure and accreditation[...], and shall be included as part of the
covered in-hospital services as specified in
subsection-(a)];

(3) Mental health partial hospitalization as a covered
benefit under this chapter shall be provided by a
hospital or a mental health outpatient facility. The
services to be covered under this paragraph shall
include those services required for licensure and
accreditation [and shall be included as part of the
covered in-hospital services as specified in
subsection-(a)]; and

(4) Mental health outpatient services shall be a covered
benefit under this chapter [and shall be included as
part of the covered outpatient services as specified
in subsection-(a)]."

SECTION 12. Section 431M-6, Hawaii Revised Statutes, is
amended to read as follows:

"§431M-6 Rules. The insurance commissioner, after
consultation with all interested parties including the director
of health, the Hawaii medical board, the board of psychology,
and representatives of insurance carriers, nonprofit mutual
benefit societies, health maintenance organizations, public and
private providers, consumers, employers, and labor organizations
shall adopt rules pursuant to chapter 91 as are deemed necessary for the effective implementation and operation of this chapter. The rules shall include criteria and guidelines to be used in determining the appropriateness and medical or psychological necessity of services covered under this chapter, including the appropriate level of care or place of treatment and the number or quantity of services, [and the objective and quantifiable criteria for determining when a health maintenance organization meets the conditions and requirements of section 431M-5,] and shall include an appeals process.

The director of health shall also adopt rules pursuant to chapter 91 as are deemed necessary for the implementation and operation of this chapter. The rules shall provide certification standards that:

(1) Reflect quality of care; and

(2) Do not compromise the quality of care."

SECTION 13. Section 432:1-406, Hawaii Revised Statutes, is amended by amending the definition of "uncovered expenditures" to read as follows:

"Uncovered expenditures" means the costs to the mutual benefit society for health care services that are the obligation of the mutual benefit society, for which a member may be liable
in the event of the mutual benefit society's insolvency, and for which no alternative arrangements have been made that are acceptable to the commissioner. Uncovered expenditures include but are not limited to out-of-area services, referral services, and hospital services. Uncovered expenditures do not include expenditures for services when a provider has agreed not to bill the member even though the provider is not paid by the mutual benefit society, or for services that are guaranteed, insured, or assumed by a person or organization other than a mutual benefit society.

SECTION 14. Section 432:2-102, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Nothing in this article shall exempt fraternal benefit societies from the provisions and requirements of part IV of article 2, part IV of article 3, and article 15 of chapter 431, and [of section 431:2-215.] sections 431:2-215, 431:3-303, 431:3-304, and 431:3-305."

SECTION 15. Section 432D-1, Hawaii Revised Statutes, is amended by amending the definition of "uncovered expenditures" to read as follows:

""Uncovered expenditures" means the costs to the health maintenance organization for health care services that are the
obligation of the health maintenance organization, for which an enrollee may also be liable in the event of the health maintenance organization's insolvency, and for which no alternative arrangements have been made that are acceptable to the commissioner. Uncovered expenditures include but are not limited to out-of-area services, referral services, and hospital services. Uncovered expenditures do not include expenditures for services when a provider has agreed not to bill the enrollee even though the provider is not paid by the health maintenance organization, or for services that are guaranteed, insured, or assumed by a person or organization other than the health maintenance organization."

SECTION 16. Section 432D-19, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Article 2, article 2D, part IV of article 3, article 6, part III of article 7, article 9A, article 13, article 14G, and article 15 of chapter 431, and sections 431:3-301 [and], 431:3-302, 431:3-303, 431:3-304, and 431:3-305, and the powers granted by those provisions to the commissioner shall apply to health maintenance organizations, so long as the application in any particular case is in compliance with and is not preempted by applicable federal statutes and regulations."
SECTION 17. Section 432G-1, Hawaii Revised Statutes, is amended by amending the definition of "uncovered expenditures" to read as follows:

"Uncovered expenditures" means the costs to the dental insurer for dental care services that are the obligation of the dental insurer, for which an enrollee may also be liable in the event of the dental insurer's insolvency, and for which no alternative arrangements have been made that are acceptable to the commissioner. Uncovered expenditures include but are not limited to out-of-area services, referral services, and hospital services. Uncovered expenditures shall not include expenditures for services when a provider has agreed not to bill the enrollee even though the provider is not paid by the dental insurer, or for services that are guaranteed, insured, or assumed by a person or organization other than the dental insurer."

SECTION 18. Section 431M-3, Hawaii Revised Statutes, is repealed.

["$431M-3 Peer review. (a) Covered benefits for alcohol dependence, drug dependence, or mental illness insurance policies, hospital or medical service plan contracts, and health maintenance organization health plan contracts shall be limited to those services certified by the insurance or health care plan..."
carrier's physician, psychologist, licensed clinical social
worker, marriage and family therapist, licensed mental health
counselor, or advanced practice registered nurse as medically or
psychologically necessary at the least restrictive appropriate
level of care.

(b) All alcohol dependence, drug dependence, or mental
illness treatment or services as set forth in this chapter shall
be subject to peer review procedures as a condition of payment
or reimbursement, to assure that reimbursement is limited to
appropriate utilization under criteria incorporated into
insurance policies or health or service plan contracts either
directly or by reference. Review may involve prior approval,
concurrent review of the continuation of treatment, post-
treatment review or any combination of these. However, if prior
approval is required, provision shall be made to allow for
payment of urgent or emergency admissions, subject to subsequent
review.

SECTION 19. Section 431M-5, Hawaii Revised Statutes, is
repealed.

['$431M-5-Nondiscrimination in deductibles, copayment
plans, and other limitations on payment. (a) Deductible or
copayment plans may be applied to benefits paid to or on behalf
of patients during the course of treatment as described in section 431M-4, but in any case the proportion of deductibles or copayments shall be not greater than those applied to comparable physical illnesses generally requiring a comparable level of care in each policy.

(b) Notwithstanding subsection (a), health maintenance organizations may establish reasonable provisions for enrollee cost-sharing so long as the amount the enrollee is required to pay does not exceed the amount of copayment and deductible customarily required by insurance policies which are subject to the provisions of this chapter for this type and level of service. Nothing in this chapter prevents health maintenance organizations from establishing durational limits which are actuarially equivalent to the benefits required by this chapter. Health maintenance organizations may limit the receipt of covered services by enrollees to services provided by or upon referral by providers associated with the health maintenance organization.

(c) A health insurance plan shall not impose rates, terms, or conditions including service limits and financial requirements, on serious mental illness benefits, if similar rates, terms, or conditions are not applied to services for...
other medical or surgical conditions. This chapter shall not
apply to individual contracts; provided further that this
chapter shall not apply to QUEST medical plans under the
department of human services until July 1, 2002."

SECTION 20. Statutory material to be repealed is bracketed
and stricken. New statutory material is underscored.

SECTION 21. This Act shall take effect on July 1, 2014.
Report Title:
Insurance; Rescission of Coverage; Health Benefit Plans; General Casualty Insurance; Tax Records; Insurance Fraud Investigations; Long-term Care Insurance; Captive Insurance

Description:
Prohibits rescission of coverage under health benefit plans in most circumstances; requires written notice prior to rescission. Clarifies the authority of insurers with general casualty insurance authority. Clarifies retention requirements. Allows the insurance fraud investigations branch to take appropriate action in certain instances. Includes long-term care insurance as part of limited benefit health insurance. Makes housekeeping amendments to the State's Insurance Code. Makes other amendments to conform to National Association of Insurance Commissioners model laws and the federal Patient Protection and Affordable Care Act. (CD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.