

H.B. NO. 1086

A BILL FOR AN ACT

RELATING TO INSURANCE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to provide the
2 insurance commissioner with express prior approval authority
3 over long-term care insurance rates.

4 SECTION 2. Chapter 431, Hawaii Revised Statutes, is
5 amended by adding to part II of article 10H a new section to be
6 appropriately designated and to read as follows:

7 "§431:10H- Disapproval of filings. If the commissioner
8 finds that a filing does not meet the requirements of this
9 chapter in whole or in part, a written request for a hearing may
10 be filed pursuant to section 431:14G-112. The insurer shall
11 bear the burden of proving that the filing meets the
12 requirements of this article."

13 SECTION 3. Section 431:10H-207.5, Hawaii Revised Statutes,
14 is amended to read as follows:

15 " [†] §431:10H-207.5 [†] **Premium rate schedule increases.**

16 (a) This section shall apply as follows:

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1 (1) Except as provided in paragraph (2), this section
2 applies to any long-term care policy or certificate
3 issued in this State after December 31, 2007; and

4 (2) For certificates issued after June 30, 2007, under a
5 group long-term care insurance policy, as defined in
6 paragraph (1) of the definition of "group long-term
7 care insurance" in section 431:10H-104, which policy
8 was in force on July 1, 2007, this section shall apply
9 on the policy anniversary following July 1, 2007.

10 (b) An insurer shall [~~provide notice of a pending~~] request
11 approval from the commissioner of a premium rate schedule
12 increase, including an exceptional increase, [~~to the~~
13 commissioner] at least [~~thirty~~] sixty days prior to the notice
14 to the policyholders and shall include:

15 (1) Information required by section 431:10H-221;

16 (2) A certification by a qualified actuary that:

17 (A) If the requested premium rate schedule increase
18 is implemented and the underlying assumptions[~~7~~
19 ~~which~~] that reflect moderately adverse
20 conditions[~~7~~] are realized, no further premium
21 rate schedule increases are anticipated; and

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- 1 (B) The premium rate filing [~~is in compliance~~]
2 complies with this section;
- 3 (3) An actuarial memorandum justifying the rate schedule
4 change request that includes:
- 5 (A) Lifetime projections of earned premiums and
6 incurred claims based on the filed premium rate
7 schedule increase and the method and assumptions
8 used [~~in determining~~] to determine the projected
9 values, including reflection of any assumptions
10 that deviate from those used for pricing other
11 forms currently available for sale; provided
12 that:
- 13 (i) Annual values for the five years preceding
14 and the three years following the valuation
15 date shall be provided separately;
- 16 (ii) The projections shall include the
17 development of the lifetime loss ratio,
18 unless the rate increase is an exceptional
19 increase;
- 20 (iii) The projections shall demonstrate compliance
21 with subsection (c); and

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- 1 (iv) For exceptional increases, the projected
2 experience should be limited to the
3 increases in claims expenses attributable to
4 the approved reasons for the exceptional
5 increase. If the commissioner determines,
6 as provided in paragraph (4) of the
7 definition of "exceptional increase" in
8 section 431:10H-104, that offsets may exist,
9 the insurer shall use appropriate net
10 projected experience;
- 11 (B) Disclosure of how reserves have been incorporated
12 in this rate increase whenever the rate increase
13 will trigger a contingent benefit upon lapse;
- 14 (C) Disclosure of the analysis performed to determine
15 why a rate adjustment is necessary, which pricing
16 assumptions were not realized and why, and what
17 other actions taken by the company have been
18 relied on by the actuary;
- 19 (D) A statement that policy design, underwriting, and
20 claims adjudication practices have been taken
21 into consideration; and

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1 (E) [~~If it is necessary to maintain consistent~~
2 ~~premium rates for new certificates and~~
3 ~~certificates receiving a rate increase, the~~
4 ~~insurer shall file composite] Composite rates
5 reflecting projections of new certificates [~~+~~], if
6 it is necessary to maintain consistent premium
7 rates for new certificates and certificates
8 receiving a rate increase;~~

9 (4) A statement that renewal premium rate schedules are
10 not greater than new business premium rate schedules
11 except for differences attributable to benefits,
12 unless sufficient justification is provided to the
13 commissioner; and

14 (5) Sufficient information for [~~the review~~] approval by
15 the commissioner of the premium rate schedule increase
16 [~~by the commissioner~~].

17 (c) All premium rate schedule increases shall be
18 determined in accordance with the following requirements:

19 (1) Exceptional increases shall provide that seventy per
20 cent of the present value of projected additional
21 premiums from the exceptional increase shall be
22 returned to policyholders in benefits;

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- 1 (2) Premium rate schedule increases shall be calculated so
2 that the sum of the accumulated value of incurred
3 claims, without the inclusion of active life reserves,
4 and the present value of future projected incurred
5 claims, without the inclusion of active life reserves,
6 will not be less than the sum of the following:
7 (A) The accumulated value of the initial earned
8 premium times fifty-eight per cent;
9 (B) Eighty-five per cent of the accumulated value of
10 prior premium rate schedule increases on an
11 earned basis;
12 (C) The present value of future projected initial
13 earned premiums times fifty-eight per cent; and
14 (D) Eighty-five per cent of the present value of
15 future projected premiums not in subparagraph (C)
16 on an earned basis;
- 17 (3) If a policy form has both exceptional and other
18 increases, the values in paragraph (2) (B) and (D)
19 shall also include seventy per cent for exceptional
20 rate increase amounts; and
- 21 (4) All present and accumulated values used to determine
22 rate increases shall use the maximum valuation

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1 interest rate for contract reserves, as applicable, as
2 specified in sections 431:5-303 and 431:5-307. The
3 actuary shall disclose as part of the actuarial
4 memorandum the use of any appropriate averages.

5 (d) For each rate increase that is implemented, the
6 insurer shall file for review by the commissioner updated
7 projections, as provided in subsection (b) (3) (A), annually for
8 the next three years [7] and include a comparison of actual
9 results to projected values. The commissioner may extend the
10 period to greater than three years if actual results are not
11 consistent with projected values from prior projections. For
12 group insurance policies that meet the conditions in subsection
13 [~~(k)~~] (m), the projections required by this subsection shall be
14 provided to the policyholder in lieu of filing with the
15 commissioner.

16 (e) If any premium rate in the revised premium rate
17 schedule is greater than two hundred per cent of the comparable
18 rate in the initial premium schedule, lifetime projections [7] as
19 provided in subsection (b) (3) (A) [7] shall be filed for review by
20 the commissioner every five years following the end of the
21 required period in subsection (d). For group insurance policies
22 that meet the conditions in subsection [~~(k)~~] (m), the

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1 projections required by this subsection shall be provided to the
2 policyholder in lieu of filing with the commissioner.

3 (f) If the commissioner has determined that the actual
4 experience following a rate increase does not adequately match
5 the projected experience and that the current projections under
6 moderately adverse conditions demonstrate that incurred claims
7 will not exceed proportions of premiums specified in subsection
8 (c), the commissioner may require the insurer to implement any
9 of the following:

- 10 (1) Premium rate schedule adjustments; or
11 (2) Other measures to reduce the difference between the
12 projected and actual experience.

13 In determining whether the actual experience adequately
14 matches the projected experience, consideration should be given
15 to subsection (b)(3)(E), if applicable.

16 (g) If the majority of the policies or certificates to
17 which the increase is applicable are eligible for the contingent
18 benefit upon lapse, the insurer shall file:

- 19 (1) A plan, subject to the commissioner's approval, for
20 improved administration or claims processing designed
21 to eliminate the potential for further deterioration
22 of the policy form requiring further premium rate

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1 schedule increases, or both, or to demonstrate that
2 appropriate administration and claims processing have
3 been implemented or are in effect; otherwise the
4 commissioner may impose the condition in subsection
5 (h); and

6 (2) The original anticipated lifetime loss ratio and the
7 premium rate schedule increase that would have been
8 calculated according to subsection (c), had the
9 greater of the original anticipated lifetime loss
10 ratio or fifty-eight per cent been used in the
11 calculations described in subsection (c) (2) (A) and
12 (C).

13 (h) For a rate increase filing that meets the following
14 criteria, the commissioner shall review, for all policies
15 included in the filing, the projected lapse rates and past lapse
16 rates during the twelve months following each increase to
17 determine if significant adverse lapsing has occurred or is
18 anticipated:

- 19 (1) The rate increase is not the first rate increase
20 requested for the specific policy form or forms;
- 21 (2) The rate increase is not an exceptional increase; and

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1 (3) The majority of the policies or certificates to which
2 the increase is applicable are eligible for the
3 contingent benefit upon lapse.

4 If significant adverse lapsing has occurred, is anticipated
5 in the filing, or is evidenced in the actual results as
6 presented in the updated projections provided by the insurer
7 following the requested rate increase, the commissioner may
8 determine that a rate spiral exists. Following the
9 determination that a rate spiral exists, the commissioner may
10 require the insurer to offer, without underwriting, to all in
11 force insureds, subject to the rate increase, the option to
12 replace existing coverage with one or more reasonably comparable
13 products being offered by the insurer or its affiliates;
14 provided that the offer shall be subject to the approval of the
15 commissioner, be based on actuarially sound principles but not
16 on attained age, and provide that maximum benefits under any new
17 policy accepted by an insured shall be reduced by comparable
18 benefits already paid under the existing policy.

19 The insurer shall maintain the experience of all the
20 replacement insureds separate from the experience of insureds
21 originally issued the policy forms. In the event of a request
22 for a rate increase on the policy form, the rate increase shall

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1 be limited to the lesser of the maximum rate increase determined
2 based on the combined experience or the maximum rate increase
3 determined based only on the experience of the insureds
4 originally issued the form plus ten per cent.

5 (i) When a filing is not accompanied by supporting
6 information or the commissioner does not have sufficient
7 information to determine whether the filing meets the
8 requirements of this article, the commissioner shall require the
9 insurer to furnish additional information, and the waiting
10 period shall commence as of the date the information is
11 furnished. Until the requested information is provided, the
12 filing shall not be deemed complete or filed, and the filing
13 shall not be used by the insurer. If the requested information
14 is not provided within a reasonable time period, the filing may
15 be returned to the insurer as not filed and not available for
16 use.

17 (j) Except as provided herein, each filing shall be on
18 file for a waiting period of sixty days before the filing
19 becomes effective. The waiting period may be extended by the
20 commissioner for not more than fifteen days if the commissioner
21 gives written notice within the waiting period to the insurer
22 that made the filing that the commissioner needs additional time

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1 to consider the filing. Upon written application by the
2 insurer, the commissioner may authorize a filing that the
3 commissioner has reviewed to become effective before the
4 expiration of the waiting period or any extension thereof. A
5 filing shall be deemed to meet the requirements of this article
6 unless disapproved by the commissioner, as provided in section
7 431:10H- , within the waiting period or any extension thereof.
8 The rates shall be deemed to meet the requirements of this
9 article until the time the commissioner reviews the filing and
10 so long as the filing remains in effect.

11 ~~(i)~~ (k) If the commissioner determines that the insurer
12 has exhibited a persistent practice of filing inadequate initial
13 premium rates for long-term care insurance, the commissioner, in
14 addition to subsection (h), may prohibit the insurer from either
15 of the following:

- 16 (1) Filing and marketing comparable coverage for a period
17 of up to five years; or
18 (2) Offering all other similar coverages and limiting
19 marketing of new applications to the products subject
20 to recent premium rate schedule increases.

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1 ~~[(j)]~~ (l) Subsections (a) to ~~[(i)]~~ (k) shall not apply to
2 policies for which the long-term care benefits provided by the
3 policy are incidental, as defined in section 431:10H-104, if the
4 policy complies with all of the following ~~[provisions]~~:

5 (1) The interest credited internally to determine cash
6 value accumulations, including long-term care, if any,
7 are guaranteed not to be less than the minimum
8 guaranteed interest rate for cash value accumulations
9 without long-term care set forth in the policy;

10 (2) The portion of the policy that provides insurance
11 benefits, other than long-term care coverage, meets
12 the nonforfeiture requirements as applicable in any of
13 the following:

14 (A) Section 431:10D-104; and

15 (B) Section 431:10D-107;

16 (3) The policy meets the disclosure requirements of
17 sections 431:10H-113 and 431:10H-114;

18 (4) The portion of the policy that provides insurance
19 benefits, other than long-term care coverage, meets
20 the requirements as applicable in the following:

21 (A) Policy illustrations as required by part IV of
22 article 10D; and

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- 1 (B) Disclosure requirements, as applicable, in
2 article [H]10D[H]; and
- 3 (5) An actuarial memorandum is filed with the commissioner
4 that includes:
- 5 (A) A description of the basis on which the long-term
6 care rates were determined;
- 7 (B) A description of the basis for the reserves;
- 8 (C) A summary of the type of policy, benefits,
9 renewability, general marketing method, and
10 limits on ages of issuance;
- 11 (D) A description and a table of each actuarial
12 assumption used. For expenses, an insurer shall
13 include per cent of premium dollars per policy
14 and dollars per unit of benefits, if any;
- 15 (E) A description and a table of the anticipated
16 policy reserves and additional reserves to be
17 held in each future year for active lives;
- 18 (F) The estimated average annual premium per policy
19 and the average issue age;
- 20 (G) A statement as to whether underwriting is
21 performed at the time of application. The
22 statement shall indicate whether underwriting is

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1 used and, if used, the statement shall include a
2 description of the type or types of underwriting
3 used, such as medical underwriting or functional
4 assessment underwriting. Concerning a group
5 policy, the statement shall indicate whether the
6 enrollee or any dependent will be underwritten
7 and when that underwriting occurs; and

8 (H) A description of the effect of the long-term care
9 policy provision on the required premiums,
10 nonforfeiture values, and reserves on the
11 underlying insurance policy, both for active
12 lives and those in long-term care claim status.

13 [~~(k)~~] (m) Subsections (f) and (h) shall not apply to group
14 insurance policies as defined in paragraph (1) of the definition
15 of "group long-term care insurance" in section 431:10H-104

16 where:

17 (1) The policies insure two hundred fifty or more persons
18 and the policyholder has five thousand or more
19 eligible employees of a single employer; or

20 (2) The policyholder, and not the certificate holders,
21 pays a material portion of the premium[~~, which~~] that
22 shall not be less than twenty per cent of the total

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1 premium for the group in the calendar year prior to
2 the year a rate increase is filed.

3 ~~[(1)]~~ (n) "Exceptional increase", for purposes of this
4 section, shall be as defined in section 431:10H-104."

5 SECTION 4. Section 431:10H-226, Hawaii Revised Statutes,
6 is amended by amending subsection (a) to read as follows:

7 "(a) Benefits under long-term care insurance policies
8 shall be deemed reasonable in relation to premiums; provided
9 that the expected loss ratio is at least sixty per cent ~~[7]~~ and
10 calculated in a manner that provides for adequate reserving of
11 the long-term care insurance risk. ~~[In evaluating]~~ Prior to any
12 approval, the commissioner shall evaluate the expected loss
13 ratio, and due consideration shall be given to all relevant
14 factors, including:

- 15 (1) Statistical credibility of incurred claims experience
16 and earned premiums;
- 17 (2) The period for which rates are computed to provide
18 coverage;
- 19 (3) Experienced and projected trends;
- 20 (4) Concentration of experience within early policy
21 duration;
- 22 (5) Expected claim fluctuation;

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- 1 (6) Experience refunds, adjustments, or dividends;
2 (7) Renewability features;
3 (8) All appropriate expense factors;
4 (9) Interest;
5 (10) Experimental nature of the coverage;
6 (11) Policy reserves;
7 (12) Mix of business by risk classification, if applicable;
8 and
9 (13) Product features such as long elimination periods,
10 high deductibles, and high maximum limits."

11 SECTION 5. Section 431:10H-226.5, Hawaii Revised Statutes,
12 is amended by amending subsection (b) to read as follows:

13 "(b) An insurer shall provide the information listed in
14 this subsection to the commissioner [~~thirty~~] for approval sixty
15 days prior to making a long-term care insurance form available
16 for sale as follows:

17 (1) A copy of the disclosure documents required in section
18 431:10H-217.5; and

19 (2) An actuarial certification consisting of at least the
20 following:

21 (A) A statement that the initial premium rate
22 schedule is sufficient to cover anticipated costs

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- 1 under moderately adverse experience and that the
2 premium rate schedule is reasonably expected to
3 be sustainable over the life of the form with no
4 future premium increases anticipated;
- 5 (B) A statement that the policy design and coverage
6 provided have been reviewed and taken into
7 consideration;
- 8 (C) A statement that the underwriting and claims
9 adjudication processes have been reviewed and
10 taken into consideration;
- 11 (D) A complete description of the basis for contract
12 reserves that are anticipated to be held under
13 the form [~~to include~~] and that includes:
- 14 (i) Sufficient detail or sample calculations
15 [~~provided so as~~] to have a complete
16 depiction of the reserve amounts to be held;
- 17 (ii) A statement that the assumptions used for
18 reserves contain reasonable margins for
19 adverse experience;
- 20 (iii) A statement that the net valuation premium
21 for renewal years does not increase,

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1 [+]except for attained-age rating where
2 permitted[+]; and

3 (iv) A statement that the difference between the
4 gross premium and the net valuation premium
5 for renewal years is sufficient to cover
6 expected renewal expenses; or if that
7 statement cannot be made, a complete
8 description of the situations where this
9 does not occur; provided that an aggregate
10 distribution of anticipated issues may be
11 used as long as the underlying gross
12 premiums maintain a reasonably consistent
13 relationship; provided further that if the
14 gross premiums for certain age groups are
15 inconsistent with this requirement, the
16 commissioner may request a demonstration
17 under subsection (c) based on a standard age
18 distribution; and

19 (E) With respect to premium rate schedules:

20 (i) A statement that the premium rate schedule
21 is not less than the premium rate schedule
22 for existing similar policy forms also

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1 available from the insurer, except for
2 reasonable differences attributable to
3 benefits; or

4 (ii) A comparison of the premium schedules for
5 similar policy forms that are currently
6 available from the insurer, with an
7 explanation of the differences."


8 SECTION 6. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 7. This Act shall take effect upon its approval;
11 provided that section 2 shall take effect on January 1, 2018.

12

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14

INTRODUCED BY:  _____

BY REQUEST

JAN 23 2017

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Report Title:

Prior Approval Authority; Long-Term Care Insurance; Insurance Rates; Rate Filing; Rate Schedule; Rate Regulation

Description:

Provides the Insurance Commissioner express prior approval authority over long-term care insurance rates. Makes technical, nonsubstantive amendments for clarity and consistency.

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

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO INSURANCE.

PURPOSE: This bill gives the Insurance Commissioner express prior approval authority over long-term care insurance rates, and makes technical and nonsubstantive amendments for clarity and consistency.

MEANS: Add a new section to part II of article 10H of chapter 431 and amend sections 431:10H-207.5, 431:10H-226(a), and 431:10H-226.5(b), Hawaii Revised Statutes (HRS).

JUSTIFICATION: This bill provides express regulatory authority to the Insurance Commissioner over long-term care insurance rates where some ambiguity in the HRS may exist.

Impact on the public: This bill will help ensure consumers are not being charged excessive rates for long-term care insurance while maintaining a fair marketplace.

Impact on the department and other agencies:
None.

GENERAL FUNDS: None.

OTHER FUNDS: Compliance Resolution Fund.

PPBS PROGRAM DESIGNATION: CCA-106.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: Upon approval, provided that section 2 shall take effect on January 1, 2018.